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ABSTRACT

The first part of this casebook for counselors presents the 1981 Ethical Standards of the American Personnel and Guidance Association, now the American Association for Counseling and Development. The second part of the book presents individual ethical standards followed by several incidents intended to illustrate and clarify the meaning of the standard; the incidents vary in seriousness from gross unethical conduct to behavior reflecting poor practices. The third part of the casebook provides three free-standing and more typical incidents that must be examined in light of the standards to arrive at a proper ethical analysis. The fourth section of the book is a selected bibliography. Eight appendices, including various codes of ethics and federal legislation pertinent to the counseling field, conclude the book. (Of special interest to educational counselors are the final regulations implementing the Family Educational Rights and Privacy Act of 1974). (BL)

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# ETHICAL STANDARDS CASEBOOK

Third Edition

Authors

Robert Callis, Ph.D.

University of Missouri — Columbia

Sharon K. Pope, Ph.D.

University of Missouri — Columbia

Mary E. DePauw, Ph.D

Saint Mary's College (Notre Dame, Ind.)

**American Personnel and Guidance Association**

**Two Skyline Place, Suite 400**

**5203 Leesburg Pike**

**Falls Church, VA 22041**

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## CONTENTS


| | Page |
|---|---|
| THE AUTHORS | 2 |
| INTRODUCTION | 3 |
| ACKNOWLEDGMENTS | 8 |
| APGA ETHICAL STANDARDS, 1981 | 9 |
| INCIDENTS THAT EXEMPLIFY THE ETHICAL STANDARDS: | 15 |
| Section A: General | 15 |
| Section B: Counseling Relationship | 24 |
| Section C: Measurement and Evaluation | 52 |
| Section D: Research and Publication | 63 |
| Section E: Consulting | 78 |
| Section F: Private Practice | 84 |
| Section G: Personnel Administration | 92 |
| Section H: Preparation Standards | 104 |
| ANALYSIS OF FREE-STANDING INCIDENTS | 115 |
| SELECTED BIBLIOGRAPHY | 124 |
| APPENDICES: | |
| A. Family Educational Rights and Privacy Act | 128 |
| B. Federal Rights to Privacy Act | 137 |
| C. ACPA Statement of Ethical and Professional Standards, 1980 | 165 |
| D. ASCA Code of Ethics, 1972 | 172 |
| E. ASGW Ethical Guidelines for Group Leaders, 1980 | 173 |
| F. AMHCA Code of Ethics for Certified Clinical Mental Health Counselors, 1980 | 174 |
| G. Policy and Procedure for Processing Complaints of Ethical Violations, 1980 | 178 |
| H. Legal Defense Program: Purposes and Procedures, 1979 | 180 |

# THE AUTHORS

*Robert Callis* Professor of Counseling Psychology and Consulting Psychologist to Student Health Service, University of Missouri — Columbia. Ph.D., University of Minnesota, 1948. Past President, American College Personnel Association. Past Editor, *Journal of College Student Personnel*. Member, APGA, ACPA, ACES, & AMEG. Fellow in Counseling Psychology, American Psychological Association. Licensed Psychologist in Missouri. Coauthor of *Minnesota Teacher Attitude Inventory*, *A Casebook of Counseling*, *Stanford Achievement Test*, High School Battery, & *Stanford Test of Academic Skills*. Editor, *APGA Ethical Standards Casebook*, Second Edition. Listed in *Who's Who in America* and in *American Men and Women in Science*.

*Sharon K. Pope* Assistant Director, Office of Student Development, University of Missouri — Columbia. Ph.D. in Counseling Psychology, University of Missouri — Columbia, 1971. Predoctoral internship in Counseling Center, University of Missouri — Kansas City. Former Counseling Psychologist and Assistant Professor of Education, University of Missouri — Kansas City. Past President, Missouri College Personnel Association. Member, APGA, ACPA, ACES, & NVGA. Past Chairman of ACPA Commission IV. Licensed Psychologist in Missouri. Listed in *Who's Who of American Women* and *Who's Who in the Midwest*.

*Mary E. DePauw* Director of Counseling and Career Development, Saint Mary's College in Notre Dame, Indiana. Ph.D. in Counseling Psychology, University of Missouri — Columbia, 1980. Member, APGA, ACPA. Certified Psychologist in Indiana. Predoctoral internships in Counseling Services and in Office of Student Development, University of Missouri — Columbia. Former student financial aid official, Graduate School of Business, University of Chicago. Listed in *Who's Who Among Students in American Universities and Colleges*.

# INTRODUCTION TO THE THIRD EDITION

From its beginnings the Ethics Committee of the American Personnel and Guidance Association (APGA) has been charged with the primary responsibility for informing the membership and others about the *APGA Ethical Standards* and their implications for professional practice. The Committee felt that one of the clearest means of doing so was through the presentation of specific incidents that illustrate compliance and noncompliance with each of the standards. Thus, early in APGA history, the idea for an ethical standards casebook was born. Appendix G explains some of the duties and functions of the Ethics Committee.

## Objectives of the Casebook

1. To provide specific examples that will illustrate and clarify the meaning and intent of each of the standards in the *APGA Ethical Standards*.
2. To inform current members, new members, and prospective members of APGA of the ethical responsibilities assumed with membership.
3. To inform nonmembers who are professional associates of members and the consumers of professional services rendered by members of the ethical standards to which members are expected to adhere in their professional work.
4. To provide a source of illustrative ethical incidents useful in the education and training of present and prospective workers in the field of personnel, guidance, and counseling.
5. To provide material that may be useful to the Ethics Committee in the execution of its responsibilities, particularly in adjudicating alleged instances of unethical behavior by a member.
6. To stimulate consideration, discussion, and questions by the membership regarding ethical issues and the *APGA Ethical Standards* so that ethical standards are as accurate as possible and that they are well understood by members and others.

## Terminology

*Member* always refers to a member of APGA. In each incident when not explicitly stated, it is to be understood that at least one of the parties involved in the incident is a member of APGA. This holds true regardless of the person's professional title—counselor, student personnel worker, dean, director, professor, counselor educator, psychologist, etc.

*Standard* is a numbered statement in one of the sections of the *APGA Ethical Standards*. For example, standard H.7 is standard number 7 in Section H: Preparation Standards. Standard H.7 reads, "Members must make students aware of the ethical responsibilities and standards of the profession."

*Incident*. Incidents are those descriptions of events involving an ethical issue and are listed under the ethical standard that deals with the ethical issue involved in the incident. Example: A.7.a+ is an incident.

## Organization of the Casebook

The **first part** of the casebook is a reporduction of the *APGA Ethical Standards* approved by the Executive Committee upon referral of the Board of Directors, January 17, 1981, and reported to the membership in the March 19, 1981, issue of the *Guidepost*.

The **second part** consists of a presentation of individual ethical standards followed by several incidents intended to illustrate and clarify the meaning of the standard. Standards vary in their complexity; some contain only one concept or element while others contain more than one. For example, standard A.1 seems to contain more than one. For example, stantributes to the well being and development of the profession, (b) the member "keeps up" professionally, and (c) the member monitors and evaluates his/her own professional practices and uses the evaluation to modify his/her practices with a view to making these more effective or efficient. Therefore, an attempt was made to identify the concepts or elements contained in each standard and to present at least one positive and one negative incident associated with each concept or element. A positive incident illustrates adherence to the ethical element and is marked plus (+). A negative incident illustrates violation of the ethical element and is marked minus (−). Not all standards, however, contain clearly discernable elements even though several incidents are needed to illustrate their complexity.

The incidents vary considerably in writing style reflecting the various contributors of the incidents. For the most part, the editors have retained this variability in styles.

The incidents vary widely in their seriousness as ethical issues. The variation ranges from instances of gross unethical or illegal conduct to those of behavior reflecting poor practices or questionable judgment. The reader will recognize that it is difficult to separate quality of performance from ethical considerations.

The **third part** contains several free-standing incidents that must be examined in light of several standards in order to arrive at the proper ethical analysis. This type of incident is probably more typical of the incidents a member may encounter than the simpler incidents reported in the **second part.**

The **fourth part** is a selected bibliography that includes references cited in the main body of the casebook as well as other references that the reader may find useful in pursuing the study of ethical and legal issues of professional practices.

The **fifth part** contains several appendices to which the member may need to refer from time to time. Appendix A is the final rule on the Family Edu-

cational Rights and Privacy Act, the so-called Buckley/Pell Amendment. Since so many APGA members work in educational settings, it is of utmost importance that such members understand the provisions and requirements of this Act.

Appendix B is the final rule on the Federal Right to Privacy Act that applies to all members working in federal agencies such as Veterans Administration hospitals and federal prisons.

Appendix C through F are the divisional codes of ethics for ACPA, ASCA, ASGW, & AMCHA. Members of a division are held responsible for observance of the divisional code of ethics as well as the APGA code.

Standards have been independently adopted by the American Personnel and Guidance Association and four of its Divisions—American College Personnel Association, American School Counselor Association, Association of Specialists in Group Work and the American Mental Health Counselors Association. The American Personnel and Guidance Association is composed of 13 relatively autonomous divisions with respect to their policies and fiscal matters. Therefore, there are several instances where there are variations in specific standards with respect to specific matters as handled by specialty divisions. Since complaints about ethical practice would be made to the general Association or the division, independently, the person alleged to have not followed the code or the standards would be reviewed against the standard of the specific division or Association.

Appendix G, APGA Policy and Procedures for Processing Complaints of Ethical Violations, describes the steps to be followed in the reporting and processing of allegations of unethical behavior of a member.

Appendix H describes the purpose and procedures of the APGA Legal Defense Program that was designed to give eligible members financial assistance in resolving legal disputes regarding their professional practices.

## History of development

*First edition.* In 1961 the Board of Directors adopted a code of ethics for APGA. In 1963 the Ethics Committee decided to develop a casebook that would exemplify the adopted ethical standards. It solicited incidents having ethical implications (good and bad) from a wide variety of APGA members including branch and divisional officers, graduate professors, and practitioners in varied settings. Then, the Committee reviewed and revised the collected incidents and organized them in such a way that there would be several illustrations from varied settings pertaining to each of the ethical standards. This constituted the first draft of the casebook. The draft was submitted to a review panel for reaction. Taking the reactions of the review panel into consideration, the Committee prepared the final draft, and, in 1965, the association published the first edition of the *APGA Ethical Standards Casebook*. Thus, there was a time lag of four years between the official adoption of the ethical standards and the issuance of a casebook to exemplify them.

*Second edition.* About 1972 it was recognized that the ethical standards needed to be revised, which would, of course require a revision of the casebook. In order to reduce the time lag between the adoption of revised standards and the issuance of a casebook based on the revised standards, two committees

were appointed to work simultaneously—one to revise the standards and the other to revise the casebook. The work of the first committee was completed when the Board of Directors adopted a revised *APGA Ethical Standards* in 1974. Of course, of necessity, the work of the second committee lagged behind the first committee. The casebook committee collected a wide variety of incidents that would illustrate by concrete examples how each ethical standard should be implemented in practice. At this point the APGA president asked a single individual to collate the incidents that the second committee had developed with the revised *Ethical Standards* and edit the revised casebook. The revised casebook was published two years after the standards were revised.

*Third edition.* In an effort to control the time lag between revision of standards and revision of the casebook, the APGA president appointed the editor of the second revision of the casebook to be ex-officio member of the Ethics Committee in order to monitor the content of the work of the Committee for the purposes of accumulating material as they might be relevant to the next revision of the casebook. The *APGA Ethical Standards* were revised and adopted by the Board of Directors in January 1981. The editor of the second edition was asked to edit the third edition with a view to publishing the third edition in January 1982. In order to meet this short time line, the assistance of two coeditors was arranged.

The lessons we have learned from our experience with three editions of the *APGA Ethical Standards Casebook* follow: (1) a casebook to be maximally effective should be published as soon as possible after the ethical standards are revised, (2) the people responsible for revising the casebook must be designated well ahead of the effective date of any revision of the standards themselves, and (3) the editors of the casebook must be in close communication with the thought processes that cause revision of the ethical standards to occur. In this way we can be of maximum service to our membership.

## Future

Professional practice grows, develops, and changes. Ethical standards are a guide to proper professional practice. Thus, as professional practice, laws, and our society change, these changes ought to be reflected in our ethical standards. APGA has a standing Committee on Ethics. Just as members can contact this committee regarding ethical practices, they also are urged to communicate to this committee any defects in the current standards and our interpretation of them in this Casebook, as well as changes that may need to be made in them caused by changes in professional practice, new laws, new court decisions, or changes in society.

Ethical standards and the accompanying casebook should grow out of and reflect the experience of the profession. No Ethics Committee or group of editors can do this task alone. Members can help make these documents maximally authentic. Members are requested and urged to report incidents involving ethical issues to APGA headquarters where they will be accumulated and studied by the appropriate committees for future revisions of the standards and casebook. Reports of such incidents should be disguised to prevent identification of individuals and institutions. Such reports should be factually accurate and as complete as possible. Reports should be marked for the attention

of the APGA Ethics Committee and should carry a notation such as "*For Information Only; This is not a formal complaint.*" To file a formal complaint, follow the procedures outlined in Appendix G.

Robert Callis, Ph.D.
Sharon K. Pope, Ph.D.
Mary E. DePauw, Ph.D.

September 1981

# ACKNOWLEDGMENTS

Many people have contributed to this edition of the *Casebook*, some known to us and some not. First and perhaps foremost are the people who contributed to the first and second editions. Members of the Ethics Committee have contributed, primarily in revising the standards and in explaining the intent of the revision. Staff members in the U.S. Department of Education and in Congressional offices have generously responded to requests for information and documents. Special thanks go to Dr. Bill Riley, U.S. Department of Education.

Several individuals have provided us with descriptions of incidents involving ethical issues for inclusion in this revision. We have used all of their material in one way or another. Thanks go to Dr. Charles Claxton, Dr. Harold E. Husa, Ms. Sandra Kaplan, Dr. Pat Murrell, Dr. Gayle Roberts, and Dr. Russell Thomas.

The APGA headquarters staff have responded promptly to our appeals for help. Special thanks go to Mr. Stephen Trigonoplos, Director of APGA publications, and his staff. They are a capable and conscientious publications crew, easy to work with. Thanks go also to Dr. P. J. McDonough, Ms. Sylvia Nisenoff, Ms. Mary Janicke, and, last but not least, Dr. Charles L. Lewis, our Executive Vice President.

Any one who has attempted to prepare a manuscript of any length quickly learns the worth of a skilled secretary and an accurate typist. Our thanks go to Ms. Jane Dier, Ms. Mary Hoover, Ms. Pat Holzschuh, and Ms. Lorraine Bagarus.

# APGA
# ETHICAL STANDARDS

(Approved by Executive Committee Upon Referral of the Board of Directors, January 17, 1981)

## PREAMBLE

*The American Personnel and Guidance Association is an educational, scientific, and professional organization whose members are dedicated to the enhancement of the worth, dignity, potential, and uniqueness of each individual and thus to the service of society.*

*The Association recognizes that the role definitions and work settings of its members include a wide variety of academic disciplines, levels of academic preparation, and agency services. This diversity reflects the breadth of the Association's interest and influence. It also poses challenging complexities in efforts to set standards for the performance of members, desired requisite preparation or practice, and supporting social, legal, and ethical controls.*

*The specification of ethical standards enables the Association to clarify to present and future members, and to those served by members, the nature of ethical responsibilities held in common by its members.*

*The existence of such standards serves to stimulate greater concern by members for their own professional functioning and for the conduct of fellow professionals such as counselors, guidance and student personnel workers, and others in the helping professions. As the ethical code of the Association, this document establishes principles that define the ethical behavior of Association members.*

## Section A: General

A.1. The member influences the development of the profession by continuous efforts to improve professional practices, teaching, services, and research. Professional growth is continuous throughout the member's career and is exemplified by the development of a philosophy that explains why and how a member functions in the helping relationship. Members must gather data on their effectiveness and be guided by the findings.

A.2. The member has a responsibility both to the individual who is served and to the institution within which the service is performed to maintain high standards of professional conduct. The member strives to maintain the highest levels of professional services offered to the individuals to be served. The member also strives to assist the agency, organization, or institution in providing the highest caliber of professional services. The acceptance of employment in an institution implies that the member is in agreement with the general policies and principles of the institution. Therefore the professional activities of the member are also in accord with the objectives of the institution. If, despite concerted efforts, the member cannot reach agreement with the employer as to acceptable standards of conduct that allow for changes in institutional policy conducive to the positive growth and development of clients, then terminating the affiliation should be seriously considered.

A.3. Ethical behavior among professional associates, both members and nonmembers, must be expected at all times. When information is possessed that raises doubt as to the ethical behavior of professional colleagues, whether Association members or not, the member must take action to attempt to rectify such a condition. Such action shall use the institution's channels first and then use procedures established by the state Branch, Division, or Association.

A.4. The member neither claims nor implies professional qualifications exceeding those possessed and is responsible for correcting any misrepresentations of these qualifications by others.

A.5. In establishing fees for professional counseling services, members must consider the financial status of clients and locality. In the event that the established fee structure is inappropriate for a client, assistance must be provided in finding comparable services of acceptable cost.

A.6. When members provide information to the public or to subordinates, peers, or supervisors, they have a responsibility to ensure that the content is general, unidentified client information that is accurate, unbiased, and consists of objective, factual data.

A.7. With regard to the delivery of professional services, members should accept only

those positions for which they are professionally qualified.

A.8. In the counseling relationship the counselor is aware of the intimacy of the relationship and maintains respect for the client and avoids engaging in activities that seek to meet the counselor's personal needs at the expense of that client. Through awareness of the negative impact of both racial and sexual stereotyping and discrimination, the counselor guards the individual rights and personal dignity of the client in the counseling relationship.

## Section B: Counseling Relationship

This section refers to practices and procedures of individual and/or group counseling relationships.

The member must recognize the need for client freedom of choice. Under those circumstances where this is not possible, the member must apprise clients of restrictions that may limit their freedom of choice.

B.1. The member's *primary* obligation is to respect the integrity and promote the welfare of the client(s), whether the client(s) is (are) assisted individually or in a group relationship. In a group setting, the member is also responsible for taking reasonable precautions to protect individuals from physical and/or psychological trauma resulting from interaction within the group.

B.2. The counseling relationship and information resulting therefrom must be kept confidential, consistent with the obligations of the member as a professional person. In a group counseling setting the counselor must set a norm of confidentiality regarding all group participants' disclosures.

B.3. If an individual is already in a counseling relationship with another professional person, the member does not enter into a counseling relationship without first contacting and receiving the approval of that other professional. If the member discovers that the client is in another counseling relationship after the counseling relationship begins, the member must gain the consent of the other professional or terminate the relationship, unless the client elects to terminate the other relationship.

B.4. When the client's condition indicates that there is clear and imminent danger to the client or others, the member must take reasonable personal action or inform responsible authorities. Consultation with other professionals must be used where possible. The assumption of responsibility for the client(s) behavior must be taken only after careful deliberation. The client must be involved in the resumption of responsibility as quickly as possible.

B.5. Records of the counseling relationship, including interview notes, test data, correspondence, tape recordings, and other documents, are to be considered professional information for use in counseling, and they should not be considered a part of the records of the institution or agency in which the counselor is employed unless specified by state statute or regulation. Revelation to others of counseling material must occur only upon the expressed consent of the client.

B.6. Use of data derived from a counseling relationship for purposes of counselor training or research shall be confined to content that can be disguised to ensure full protection of the identity of the subject client.

B.7. The member must inform the client of the purposes, goals, techniques, rules of procedure and limitations that may affect the relationship at or before the time that the counseling relationship is entered.

B.8. The member must screen prospective group participants, especially when the emphasis is on self-understanding and growth through self-disclosure. The member must maintain an awareness of the group participants' compatibility throughout the life of the group.

B.9. The member may choose to consult with any other professionally competent person about a client. In choosing a consultant, the member must avoid placing the consultant in a conflict-of-interest situation that would preclude the consultant's being a proper party to the member's efforts to help the client.

B.10. If the member determines an inability to be of professional assistance to the client, the member must either avoid initiating the counseling relationship or immediately terminate that relationship. In either event, the member must suggest appropriate alternatives. (The member must be knowledgeable about referral resources so that a satisfactory referral can be initiated.) In the event the client declines the suggested referral, the member is not obligated to continue the relationship.

B.11. When the member has other relationships, particularly of an administrative, supervisory and/or evaluative nature with an individual seeking counseling services, the member must not serve as the counselor but should refer the individual to another professional. Only in instances where such an alternative is unavailable and where the individual's situation warrants counseling intervention should the member enter into and/or maintain a counseling relationship. Dual relationships with clients that might impair the

member's objectivity and professional judgment (e.g., as with close friends or relatives, sexual intimacies with any client) must be avoided and/or the counseling relationship terminated through referral to another competent professional.

B.12. All experimental methods of treatment must be clearly indicated to prospective recipients and safety precautions are to be adhered to by the member.

B.13. When the member is engaged in short-term group treatment/training programs (e.g., marathons and other encounter-type or growth groups), the member ensures that there is professional assistance available during and following the group experience.

B.14. Should the member be engaged in a work setting that calls for any variation from the above statements, the member is obligated to consult with other professionals whenever possible to consider justifiable alternatives.

## Section C: Measurement and Evaluation

The primary purpose of educational and psychological testing is to provide descriptive measures that are objective and interpretable in either comparative or absolute terms. The member must recognize the need to interpret the statements that follow as applying to the whole range of appraisal techniques including test and nontest data. Test results constitute only one of a variety of pertinent sources of information for personnel, guidance and counseling decisions.

C.1. The member must provide specific orientation or information to the examinee(s) prior to and following the test admministration so that the results of testing may be placed in proper perspective with other relevant factors. In so doing, the member must recognize the effects of socioeconomic, ethic, and cultural factors on test scores. It is the member's professional responsibility to use additional unvalidated information carefully in modifying interpretation of the test results.

C.2. In selecting tests for use in a given situation or with a particular client, the member must consider carefully the specific validity, reliability, and appropriateness of the test(s). *General* validity, reliability, and the like may be questioned legally as well as ethically when tests are used for vocational and educational selection, placement, or counseling.

C.3. When making any statements to the public about tests and testing, the member must give accurate information and avoid false claims or misconceptions. Special efforts are often required to avoid unwarranted connotations of such terms as *IQ* and *grade equivalent* scores.

C.4. Different tests demand different levels of competence for administration, scoring, and interpretation. Members must recognize the limits of their competence and perform only those functions for which they are prepared.

C.5. Tests must be administered under the same conditions that were established in their standardization. When tests are not administered under standard conditions or when unusual behavior or irregularities occur during the testing session, those conditions must be noted and the results designated as invalid or of questionable validity. Unsupervised or inadequately supervised test-taking, such as the use of tests through the mails, is considered unethical. On the other hand, the use of instruments that are so designed or standardized to be self-administered and self-scored, such as interest inventories, is to be encouraged.

C.6. The meaningfulness of test results used in personnel, guidance, and counseling functions generally depends on the examinee's unfamiliarity with the specific items on the test. Any prior coaching or dissemination of the test materials can invalidate test results. Therefore, test security is one of the professional obligations of the member. Conditions that produce most favorable test results must be made known to the examinee.

C.7. The purpose of testing and the explicit use of the results must be made known to the examinee before testing. The counselor must ensure that instrument limitations are not exceeded and that periodic review and/or retesting are made to prevent client stereotyping.

C.8. The examinee's welfare and explicit prior understanding must be the criteria for determining the recipients of the test results. The member must see that specific interpretation accompanies any release of individual or group test data. The interpretation of test data must be related to the examinee's particular concerns.

C.9. The member must be cautious when interpreting the results of research instruments possessing insufficient technical data. The specific purposes for the use of such instruments must be stated explicitly to examinees.

C.10. The member must proceed with caution when attempting to evaluate and interpret the performance of minority group

members or other persons who are not represented in the norm group on which the instrument was standardized.

C.11. The member must guard against the appropriation, reproduction or modifications of published tests or parts thereof without acknowledgment and permission from the previous publisher.

C.12. Regarding the preparation, publication and distribution of tests, reference should be made to

a. *Standards for Educational and Psychological Tests and Manuals*, revised edition, 1974, published by the American Psychological Association on behalf of itself, the American Educational Research Association and the National Council on Measurement in Education.

b. The responsible use of tests: A position paper of AMEG, APGA, and NCME. *Measurement and Evaluation in Guidance*. 1972, 5, 385-388.

c. "Responsibilities of Users of Standardized Tests," APGA, *Guidepost*, October 5, 1978, pp. 5-8.

## Section D: Research and Publication

D.1. Guidelines on research with human subjects shall be adhered to, such as:

a. *Ethical Principles in the Conduct of Research with Human Participants*. Washington, D.C.: American Psychological Association, Inc., 1973.

b. Code of Federal Regulations, Title 45, Subtitle A, Part 46, as currently issued.

D.2. In planning any research activity dealing with human subjects, the member must be aware of and responsive to all pertinent ethical principles and ensure that the research problem, design, and execution are in full compliance with them.

D.3. Responsibility for ethical research practice lies with the principal researcher, while others involved in the research activities share ethical obligation and full responsibility for their own actions.

D.4. In research with human subjects, researchers are responsible for the subjects' welfare throughout the experiment, and they must take all reasonable precautions to avoid causing injurious psychological, physical, or social effects on their subjects.

D.5. All research subjects must be informed of the purpose of the study except when withholding information or providing misinformation to them is essential to the investigation. In such research the member must be responsible for corrective action as soon as possible following completion of the research.

D.6. Participation in research must be voluntary. Involuntary participation is appropriate only when it can be demonstrated that participation will have no harmful effects on subjects and is essential to the investigation.

D.7. When reporting research results, explicit mention must be made of all variables and conditions known to the investigator that might affect the outcome of the investigation or the interpretation of the data.

D.8. The member must be responsible for conducting and reporting investigations in a manner that minimizes the possibility that results will be misleading.

D.9. The member has an obligation to make available sufficient original research data to qualified others who may wish to replicate the study.

D.10. When supplying data, aiding in the research of another person, reporting research results, or in making original data available, due care must be taken to disguise the identity of the subjects in the absence of specific authorization from such subjects to do otherwise.

D.11. When conducting and reporting research, the member must be familiar with, and give recognition to, previous work on the topic, as well as to observe all copyright laws and follow the principles of giving full credit to all to whom credit is due.

D.12. The member must give due credit through joint authorship, acknowledgment, footnote statements or other appropriate means to those who have contributed significantly to the research and/or publication, in accordance with such contributions.

D.13. The member must communicate to other members the results of any research judged to be of professional or scientific value. Results reflecting unfavorably on institutions, programs, services, or vested interests must not be withheld for such reasons.

D.14. If members agree to cooperate with another individual in research and/or publication, they incur an obligation to cooperate as promised in terms of punctuality of performance and with full regard to the completeness and accuracy of the information required.

D.15. Ethical practice requires that authors not submit the same manuscript or one essentially similar in content, for simultaneous publication consideration by two or more journals. In addition, manuscripts published in whole or in substantial part, in another journal or published work should not be submitted for publication without acknowledg-

ment and permission from the previous publication.

## Section E: Consulting

*Consultation* refers to a voluntary relationship between a professional helper and help-needing individual, group or social unit in which the consultant is providing help to the client(s) in defining and solving a work-related problem or potential problem with a client or clientsystem. (This definition is adapted from Kurpius, DeWayne. Consultation theory and process: An integrated model. *Personnel and Guidance Journal*. 1978, 56, 335-338.)

E.1. The member acting as consultant must have a high degree of self-awareness of his/her own values, knowledge, skills, limitations, and needs in entering a helping relationship that involves human and/or organizational change and that the focus of the relationship be on the issues to be resolved and not on the person(s) presenting the problem.

E.2. There must be understanding and agreement between member and client for the problem definition, change goals and predicated consequences of interventions selected.

E.3. The member must be reasonably certain that she/he or the organization represented has the necessary competencies and resources for giving the kind of help that is needed now or may develop later and that appropriate referral resources are available to the consultant.

E.4. The consulting relationship must be one in which client adaptability and growth toward self-direction are encouraged and cultivated. The member must maintain this role consistently and not become a decision maker for the client or create a future dependency on the consultant.

E.5. When announcing consultant availability for services, the member conscientiously adheres to the Association's *Ethical Standards*.

E.6. The member must refuse a private fee or other remuneration for consultation with persons who are entitled to these services through the member's employing institution or agency. The policies of a particular agency may make explicit provisions for private practice with agency clients by members of its staff. In such instances, the clients must be apprised of other options open to them should they seek private counseling services.

## Section F: Private Practice

F.1. The member should assist the profession by facilitating the availability of counseling services in private as well as public settings.

F.2. In advertising services as a private practitioner, the member must advertise the services in such a manner so as to accurately inform the public as to services, expertise, profession, and techniques of counseling in a professional manner. A member who assumes an executive leadership role in the organization shall not permit his/her name to be used in professional notices during periods when not actively engaged in the private practice of counseling.

The member may list the following: highest relevant degree, type and level of certification or license, type and/or description of services and other relevant information. Such information must not contain false, inaccurate, misleading, partial, out-of-context, or deceptive material or statements.

F.3. Members may join in partnership/corporation with other members and/or other professionals provided that each member of the partnership or corporation makes clear the separate specialties by name in compliance with the regulations of the locality.

F.4. A member has an obligation to withdraw from a counseling relationship if it is believed that employment will result in violation of the *Ethical Standards*. If the mental or physical condition of the member renders it difficult to carry out an effective professional relationship or if the member is discharged by the client because the counseling relationship is no longer productive for the client, then the member is obligated to terminate the counseling relationship.

F.5. A member must adhere to the regulations for private practice of the locality where the services are offered.

F.6. It is unethical to use one's institutional affiliation to recruit clients for one's private practice.

## Section G: Personnel Administration

It is recognized that most members are employed in public or quasi-public institutions. The functioning of a member within an institution must contribute to the goals of the institution and vice versa if either is to accomplish their respective goals or objectives. It is therefore essential that the member and the institution function in ways to (a) make the institution's goals explicit and public; (b) make the member's contribution to institutional goals specific; and (c) foster mutual accountability for goal achievement.

To accomplish these objectives, it is recognized that the member and the employer

must share responsibilities in the formulation and implementation of personnel policies.

G.1. Members must define and describe the parameters and levels of their professional competency.

G.2. Members must establish interpersonal relations and working agreements with supervisors and subordinates regarding counseling or clinical relationships, confidentiality, distinction between public and private material, maintenance and dissemination of recorded information, work load, and accountability. Working agreements in each instance must be specified and made known to those concerned.

G.3. Members must alert their employers to conditions that may be potentially disruptive or damaging.

G.4. Members must inform employers of conditions that may limit their effectiveness.

G.5. Members must submit regularly to professional review and evaluation.

G.6. Members must be responsible for in-service development of self and/or staff.

G.7. Members must inform their staff of goals and programs.

G.8. Members must provide personnel practices that guarantee and enhance the rights and welfare of each recipient of their service.

G.9. Members must select competent persons and assign responsibilities compatible with their skills and experiences.

## Section H: Preparation Standards

Members who are responsible for training others must be guided by the preparation standards of the Association and relevant Division(s). The member who functions in the capacity of trainer assumes unique ethical responsibilities that frequently go beyond that of the member who does not function in a training capacity. These ethical responsibilities are outlined as follows:

H.1. Members must orient students to program expectations, basic skills development, and employment prospects before admission to the program.

H.2. Members in charge of learning experiences must establish programs that integrate academic study and supervised practice.

H.3. Members must establish a program directed toward developing students' skills, knowledge, and self-understanding, stated whenever possible in competency or performance terms.

H.4. Members must identify the levels of competencies of their students in compliance with relevant Division standards. These competencies must accommodate the para-professional as well as the professional.

H.5. Members, through continual student evaluation and appraisal, must be aware of the personal limitations of the learner that might impede future performance. The instructor must not only assist the learner in securing remedial assistance but also screen from the program those individuals who are unable to provide competent services.

H.6. Members must provide a program that includes training in research commensurate with levels of role functioning. Paraprofessional and technician-level personnel must be trained as consumers of research. In addition, these personnel must learn how to evaluate their own and their program's effectiveness. Graduate training, especially at the doctoral level, would include preparation for original research by the member.

H.7. Members must make students aware of the ethical responsibilities and standards of the profession.

H.8. Preparatory programs must encourage students to value the ideals of service to individuals and to society. In this regard, direct financial remuneration or lack thereof must not influence the quality of service rendered. Monetary considerations must not be allowed to overshadow professional and humanitarian needs.

H.9. Members responsible for educational programs must be skilled as teachers and practitioners.

H.10. Members must present thoroughly varied theoretical positions so that students may make comparisons and have the opportunity to select a position.

H.11. Members must develop clear policies within their educational institutions regarding field placement and the roles of the student and the instructor in such placements.

H.12. Members must ensure that forms of learning focusing on self-understanding or growth are voluntary, or, if required as part of the education program, are made known to prospective students before entering the program. When the education program offers a growth experience with an emphasis on self-disclosure or other relatively intimate or personal involvement, the member must have no administrative, supervisory, or evaluating authority regarding the participant.

H.13. Members must conduct an educational program in keeping with the current relevant guidelines of the American Personnel and Guidance Association and its Divisions.

# INCIDENTS THAT EXEMPLIFY THE ETHICAL STANDARDS

## SECTION A: GENERAL

**A.1. The member influences the development of the profession by continuous efforts to improve professional practices, teaching, services, and research. Professional growth is continuous throughout the member's career and is exemplified by the development of a philosophy that explains why and how a member functions in the helping relationship. Members must gather data on their effectiveness and be guided by the findings.**

a+ The member is named chair of the state division's committee on group work. She corresponds with colleagues in the seven state surrounding area who hold similar positions within their state organizations. At the national APGA meeting the member convenes a meeting of these individuals to discuss mutual concerns. They decide to have a regional drive-in conference on group work the following spring.

a− A member is appointed program chair for the state division's annual meeting. Two months after the appointment she is promoted from assistant director to director. The member is overwhelmed by the increased responsibilities and no longer has time to carry through as program chair. She does not resign her position, however, nor does she get the program organized. Consequently, the annual meeting must be delayed.

b+ A director of guidance works toward having university extension classes brought into his isolated community in order to provide continuous in-service training for him and his colleagues in the school system.

b− A financial aid officer, having completed doctoral training, does not join or participate in any professional groups at the local, state or national level. He claims that his training is sufficient to ensure competent and ethical performance in his professional work.

c+ In looking over the descriptive data on program evaluations presented at the Women's Center during the fall, the director realizes very, very

few sorority or fraternity members are coming to the programs. She goes to Panhellenic Council and talks with the representatives about her discovery. The women indicate they believe the Women's Center caters only to radical feminists. The director assures them this is not the case. She further discusses with them topics in which they might be interested. The director indicates the Women's Center staff will be happy to bring the programs into the sorority houses.

c– An elementary school counselor often employs principles of reality therapy in dealing with clients. When asked by the principal to show evidence of her effectiveness, the counselor replies that she does not believe that a practitioner should take time to do research, but refers her principal to a journal article verifying the effectiveness of reality therapy.

**A.2. The member has a responsibility both to the individual who is served and to the institution within which the service is performed to maintain high standards of professional conduct. The member strives to maintain the highest levels of professional services offered to the individuals to be served. The member also strives to assist the agency, organization, or institution in providing the highest caliber of professional services. The acceptance of employment in an institution implies that the member is in agreement with the general policies and principles of the institution. Therefore the professional activities of the member are also in accord with the objectives of the institution. If, despite concerted efforts, the member cannot reach agreement with the employer as to acceptable standards of conduct that allow for changes in institutional policy conducive to the positive growth and development of clients, then terminating the affiliation should be seriously considered.**

a+ After a member has been employed in a community mental health center for two months as director, she realizes that there is an unusually long waiting list for clients to get to see a counselor. She meets with the faculty of the counseling psychology department in the nearby university and is able to reach an agreement whereby the mental health center will be used as a practicum station for counseling psychology graduate students. Subsequently, the counseling psychology students have a good supply of clients, the staff at the center have agreed to provide the graduate students with supervision, and the waiting time for clients to see a counselor has been reduced to a few days.

a– An assistant business officer at a university is also working part-time on a graduate degree. She goes to the cashier's window to pay her fees. The hours of service at the cashier's office are posted from 8:00 A.M. to 3:45 P.M. There's another student in front of the member at the cashier's window. At exactly 3:45 P.M. the cashier slams the window in the student's face saying curtly "We're closed!" The member sees this happening at all six cashier's windows, and hears how disgusted the students are. In five more minutes, all the remaining students at all the windows could have been served. The member decides not to mention this to her supervisor because she doesn't want "to make waves."

b+ A member is applying for an admissions officer position. Through the interview process, he learns the faculty are responsible for the interpretation of educational and psychological test data to their advisees. Realizing the faculty are not trained in measurement, the member becomes very concerned. When the position is offered to him, the member raises his concern regarding transmission of test data by faculty. The director explains that all faculty advisers receive intensive in-service training about the test information they will be using. The member concludes that the practices are consistent with the ethical standards of APGA.

b− A member accepts a position as a director of a home for runaway teenagers even though she is in absolute disagreement with the alcohol abuse policy of the program. During the final interview the employer asks if she has any questions, she responds "no." During her employment she refuses to report alcohol abuse violations by residents. Also, she states her opposition to this policy to the residents for whom she is responsible.

c+ A member employed in a clinic dealing primarily with alcoholics is instructed to administer aversive conditioning procedures to certain patients. The member consults with her supervisors about her ethical opposition to such methods. They point to their effectiveness record and reaffirm that she should participate. When the differences are determined to be irreconcilable, the member seeks employment elsewhere.

c− A resident hall director repeatedly refuses to report a drug-abuse violation by a student, even though she has accepted her position in full knowledge that the institution's policy on this question requires her to report such violations. Also, she states her opposition to this policy to the entire group for which she is responsible.

**A.3. Ethical behavior among professional associates, both members and nonmembers, must be expected at all times. When information is possessed that raises doubt as to the ethical behavior of professional colleagues, whether Association members or not, the member must take action to attempt to rectify such a condition. Such action shall use the institution's channels first and then use procedures established by the state Branch, Division, or Association.**

a+ A dean learns from a student that the student's faculty adviser has misinterpreted the student's freshman test scores as indicating that the student should achieve an "A" record and that he seriously expects her to so perform. The student is most anxiety-ridden at this turn of events. The dean subsequently confers with the adviser regarding the interpretation of the test data.

a− A rehabilitation counselor learns from his client that a volunteer worker in the hospital has revealed confidential information about the client to neighbors in social conversation. This information should not have gone beyond the hospital staff. The counselor decides not to pursue the issue

with the volunteer or the professional staff because this client does not seem overly concerned about the disclosure.

b+ An employment service supervisor is concerned by the way in which a new counselor tends to look for the cases that he could "sink his teeth into." He becomes more and more involved with a few clients to the exclusion of others seeking counseling. He seems to believe he can handle anyone and makes no referrals. The rest of the counseling staff becomes concerned when several of his clients inquire about breaking off their relationship without raising his animosity. The supervisor initiates a series of conferences with the counselor in an attempt to enable the counselor to gain a realistic view of his capabilities and limitations to no avail. The supervisor then files an inquiry with the APGA Ethics Committee to determine what to do next.

b− An honor student in her third year of study indicates to her faculty adviser that she has been the recipient of "indecent proposals" from another member of the faculty. The student verbalizes her fear of failing the course if she does not respond or if the teacher should learn that anyone else knows about the incident. The student proposes withdrawing from the college. The faculty adviser does nothing about the situation.

c+ A principal makes public only those test results that tend to show the school in a favorable light. There is considerable withholding of test information that might be thought to reflect discredit on the school. The new director of guidance in the school upon learning of this practice uses an early occasion to bring the ethical questions involved to the attention of the principal at their weekly conference. The principal defends this practice. The director then asks that they both confer with the superintendent.

c− A college registrar, whose duties include certifying the academic eligibility of varsity athletes, while reviewing the high school transcript of a prospective football player, notices that some grades in the transcript appear to have been altered. Rather than verifying the transcript with the high school directly, he accepts the transcript as is.

**A.4. The member neither claims nor implies professional qualifications exceeding those possessed and is responsible for correcting any misrepresentations of these qualifications by others.**

a+ A member who is director of a community child care center has developed an outstanding reputation because of the excellent service she provides to the infants and toddlers under her supervision. The parents of the children in the center come to the director to ask that she lead a series of discussions about marriage enrichment. The director has no training in the area and tells the parents that is the case. She calls the Child and Family Development Department at the nearby university and is able to

provide the parents with the name of a professor who is skilled in this area and is willing to spend time with the parents on the proposed topic of marriage enrichment.

a– A member in private practice has agreed to conduct a weekend career exploration workshop for a church group of junior high school age students. His cotherapist falls ill at the last minute. His wife who has a bachelor's degree in English volunteers to "fill in." She has been to several of these weekend workshops as an observer. The member decides that this one time his wife (who has no formal training in group work) can take the cofacilitator's place. Rather than introduce his wife as having a bachelor's degree in English and explaining that because of the unexpected illness of his formally trained cofacilitator, his wife who had participated in a number of these sessions was going to "fill in," he merely introduces her as his cofacilitator. The participants mistakenly believe the wife is a formally trained group worker in career exploration.

b+ A student with a wide variety of work experience drafts her resume upon completing her M.A. degree in student personnel administration. She asks her adviser to review the draft to ensure its accuracy and appropriateness before making it available to prospective employers.

b– A member has engaged in didactic study of individual psychological tests, but has no supervised practice in administering or interpreting such tests. In an employment interview he is asked whether he "knows how to give" such tests. The member says "yes," justifying his answer to the unsophisticated question as being truthful, although he knows that had an inquiry about his competence in individual psychological testing been put by one with adequate knowledge, he would have had to answer "no."

**A.5. In establishing fees for professional counseling services, members must consider the financial status of clients and locality. In the event that the established fee structure is inappropriate for a client, assistance must be provided in finding comparable services of acceptable cost.**

a+ A member who has been in private practice in New York marries a young woman who has been admitted to medical school. They move to the small midwest college town in which the medical school is located. Before opening his own private practice, the member goes to the department chair of counseling psychology at the University, introduces himself, and indicates he's interested in opening his own practice. He asks the department chair to recommend four professionals who are established in private practice in town in order that he might speak with them. Subsequently, the member makes appointments with the four people in private practice the department chair had recommended. After talking with these individuals the member determines to lower his fee from $75 an hour he had previously been receiving to $40 an hour in keeping with local practices.

a– A member in private practice has been engaged in marriage counseling with a husband and wife. The couple has been seeing the member once a week for four months and not once has the couple fallen behind in their payments for services rendered. The husband is a carpenter. He has an appendicitis attack and has an operation. Consequently, he misses two weeks of work. Because he only has four days of his annual sick leave available to him when the attack occurred, the operation and subsequent convalescence cause him to lose income for this period. When the couple is able to re-engage in counseling, the wife calls the member to explain their rather "tight" financial situation. She asks if they might work out a payment plan for the next month. Rather than paying $40 each visit during the next four weeks, she proposes they pay $20 each visit with the understanding that the entire bill will be paid in full by the end of the second month. This flexibility will allow the couple to "get back on their feet." The member responds that would be impossible, that they should delay the resumption of counseling until they can afford it.

b+ A member who has established an excellent reputation working with young adolescents finds that two students from the local junior high school have made an appointment to see the member. The students request that the member put on a series of workshops on drug abuse for the 8th-grade class during the spring. The member is familiar with the students' school counselor who has a fine reputation and asks the students why they don't use this school counselor. The students reply that their counselor has just left for another position and currently the position is vacant. Realizing the students cannot pay the member's fee and also realizing the member's schedule is already too full during the weeks in question, the counselor asks the students to let her think about it. Subsequently, she calls a colleague who is a counselor in another junior high school. This counselor is also an expert in working on the required topic and agrees to help the 8th-grade students. The member calls the two students back giving them the counselor's phone number, name, and background. The students phone the counselor. She agrees to do the workshops and sets up an appointment to talk to the students.

b– A member has a private practice located in a wealthy suburban area. The member feels that a sliding fee is unnecessary for this locality and refuses to do any "charity" work. When a prospective client from the few residents in the area who are not very well off financially make an appointment to see her and indicates that he cannot afford the fee, she simply says she is sorry. She does not refer him to any other agency that he might be better able to afford.

**A.6. When members provide information to the public or to subordinates, peers, or supervisors, they have a responsibility to ensure that the content is general, unidentified client information that is accurate, unbiased, and consists of objective, factual data.**

a+ The four counselors in a high school have been asked by the PTA to present a panel discussion at the final spring meeting on the problems of the

students with whom they've counseled during the past academic year. The counselors have several meetings in order to organize their presentation. They determine they will organize their data by presenting problems, year in school, and sex. They are very careful to present these data in general, concise, accurate form and in a manner that no individual student can be identified by the audience.

a– A college is very interested in attracting minority students to its campus. A member is in charge of recruiting efforts through the Office for Student Development. A series of special one-day visitations are conducted for black students throughout the state during their senior year in high school. On this particular campus there are few black students, faculty, and staff. When the black high school students are brought for the one-day visit, however, only black faculty staff and students are included in the day's activities. After the activities are over, several black students come to the member saying, "I had no idea there were so many blacks on this campus." The member does nothing to correct this mistaken impression.

b+ A counselor has become overly identified with a student with whom he is counseling. The girl is seeking admission to a college that puts much weight on recommendations from the secondary school. The counselor, realizing his involvement, has the head counselor read the recommendation in draft form. The latter's reactions enable the counselor to identify misleading elements that he corrects in the final letter.

b– Two years ago, the Dean of Students employed a young woman to be the Coordinator of Student Activities. Both the dean and the coordinator are now aware that the coordinator's job performance is marginal at best. The coordinator applies for a similar position at another college and is required to obtain a letter of recommendation from her current employer. In her letter of recommendation the dean gives the coordinator a glowing (but inaccurate) recommendation merely because she wants to avoid the unpleasantness of having to discharge her.

**A.7. With regard to the delivery of professional services, members should accept only those positions for which they are professionally qualified.**

a+ A member applies for a position in a university counseling center. The primary responsibility of the position is advertised as vocational counseling and development of a career information center. Upon being invited to campus for an interview, she finds that, because of recent reassignments of the staff, the job description had been changed to one of clinical assessment and personal-emotional counseling, duties for which the applicant feels only marginally qualified. Although the university makes her an attractive offer, she declines the offer because she feels she cannot render high-enough quality services in this new area.

a– A member accepts a position as director of residential life with responsibility for supervising the college's residence halls, married student

apartments, fraternities, and sororities. He soon finds that he has little rapport with or interest in fraternities and sororities so he simply ignores them and concentrates his efforts on the residence halls.

b+ A member whose primary interest is in one-to-one counseling accepts a position in an employment service whose major concern is job placement. The member limits his activities to those that would accomplish the mission of assisting clients to obtain gainful employment. To satisfy his interest in individual counseling, he joins the staff of a private counseling agency and does individual counseling on Saturday mornings.

b− A foreign student adviser of Jewish faith finds that he is less and less able to empathize with Arabian students from Middle East countries. He finally relegates all contact with Arabian students to his secretary and limits his personal efforts to those foreign students whose political persuasions agree with his own.

**A.8. In the counseling relationship the counselor is aware of the intimacy of the relationship and maintains respect for the client and avoids engaging in activities that seek to meet the counselor's personal needs at the expense of that client. Through awareness of the negative impact of both racial and sexual stereotyping and discrimination, the counselor guards the individual rights and personal dignity of the client in the counseling relationship.**

a+ A member is a strong believer in the "pro-life" movement. A 15-year-old girl comes to the counselor because she is pregnant. The girl wishes to obtain information regarding the physical and emotional effects of having an abortion. She also inquires as to where such an operation might be obtained. The counselor responds with factual information regarding the emotional effects and suggests she consult a physician about the physical effects. The member talks with the girl about her decision and how she feels about it. The counselor asks if the girl has talked about this decision with her parents, and the girl asks if she could bring her parents in to talk the situation over with the counselor. The counselor agrees. Throughout the entire discussion the counselor is objecttive and does not try to push "pro-life" beliefs onto the client and her parents.

a− A member in private practice has been seeing a single young man in counseling sessions for three months regarding his lack of heterosocial relationship skills. The young man is currently employed in an architectural firm. On the day of the 14th session the client appears to be more upset than usual. He finally admits he's terribly distraught because he is involved in a homosexual affair with his employer. The member is shocked because his value system cannot incorporate the idea of homosexuality. His values show through very clearly to the client. He, however, does not honestly share those values with the client nor does he offer to refer him to a counselor who would better be able to work with this client's situation.

b+ A black senior woman goes to her high school counselor to discuss her college plans. The young woman has had a B + average, has been a student council representative, and has also been active on the varsity softball team. The young woman is planning to go to the state university, which is predominantly white. The white counselor also attended the state university and was president of a prestigious sorority while a student there. The counselor has had a good relationship with the young woman since she first came in for career counseling during her sophomore year. Frequently, the young woman has dropped in over the years to share experiences and ask for advice. The student is interested in going through sorority rush and asks the counselor if she will write a letter of recommendation for her to the sorority of which the counselor was a member. The counselor says she would be delighted to do so. She continues to have an objective and honest talk with the student regarding racial attitudes held by some students on the university campus. The counselor is supportive and encouraging, although she points out that no blacks have to date been pledged in to the "white" sorority system.

b− A male member has been counseling a young woman regarding her career development problems. She has a C+ average as of her 1st semester of her senior year, and a 350 score on the Scholastic Aptitude Test. She's very outgoing and has many friends, although she has not participated in any extracurricular activities. Her career goal is to be a veterinarian. The counselor does not discuss with her the very real possibility that the goal might be out of line with her academic achievement and talents demonstrated to date. The counselor fears he'll be accused of sex-role stereotyping and consequently keeps quiet.

# Section B: Counseling Relationship

**This section refers to practices and procedures of individual and/or group counseling relationships.**

**The member must recognize the need for client freedom of choice. Under those circumstances where this is not possible, the member must apprise clients of restrictions that may limit their freedom of choice.**

**B.1. The member's *primary* obligation is to respect the integrity and promote the welfare of the client(s), whether the client(s) is (are) assisted individually or in a group relationship. In a group setting, the member is also responsible for taking reasonable precautions to protect individuals from physical and/or psychological trauma resulting from interaction within the group.**

a+ A high school senior interested in athletics contacts an admissions counselor at a college that many of her friends are considering attending. She expresses a strong desire to pursue a career in physical education. The admissions counselor knows that the college offers only a minimum curriculum in this field and questions if the liberal arts program required will be of interest to this student. The admissions counselor informs the student of the curriculum limitations and raises the questions of the appropriateness of the required program.

a– Jim contacts a junior high school counselor and expresses criticism of a certain teacher. After discussing the problem, the counselor believes that the situation could be remedied if the counselor talked to the teacher. The counselor asks Jim's permission to discuss the problem with the teacher and provide some feedback to the teacher about the way in which she is being perceived by students. Jim is concerned that the teacher will not receive the feedback well and will view Jim's contact with the counselor as an insult. Believing that this feedback should be given to the teacher and that Jim is overestimating the teacher's negative response, the counselor contacts the teacher and relates details of the discussion with Jim. The teacher expresses surprise and some irritation that Jim has gone to a counselor about the situation. The counselor is unable to influence the teacher to explore the possible validity of the feedback or to consider any suggestions regarding the relationship with Jim. When approached by the counselor, Jim expresses no interest in returning for any further discussions.

b+ A counselor is facilitating a growth group session. At one point, a group member expresses some personal concerns that indicate that he may have serious emotional problems. The counselor detects this and guides the group attention away from that group member. After the group meeting, the counselor privately encourages the person to seek individual counseling.

b− A counselor in a community mental health clinic is counseling a recent divorcee regarding her mild depression and some sexual dysfunction that was related to some incidents with her father during her adolescence. After a few sessions, the counselor begins using psychodrama techniques with the client in which he plays the role of her father. As counseling progresses the counselor begins to flirt and to try to persuade her to have an affair with him, saying that in doing so he can desensitize her to some of her sexual "hangups." At first the client agrees but quickly becomes anxious and agitated and terminates counseling.

c+ A counselor is conducting a weight-management workshop. One of the workshop participants approaches the counselor and requests assistance in developing a "crash" diet program that will produce substantial and rapid weight loss. The counselor discusses "crash" dieting side effects emphasizing the potential physical hazards. After pointing out the importance and benefit of professional assistance when undertaking a significant weight-loss program, the counselor suggests several alternatives to the person for obtaining appropriate professional assistance.

c− As part of a bioenergetics workshop, all participants are required to take turns beating a pillow full-force against a wall. One client tells the counselor he is feeling pain following his turn. The counselor discounts the comment and remarks that the client is just "out of shape." The client is instructed to continue in sequence as scheduled. The following day the client's discomfort continues and physical examination by a physical reveals a severe muscle strain.

d+ An elementary school counselor is conducting group counseling sessions with six emotionally disturbed children from a special education program. In the third session, one of the children becomes very agitated and physically combative. The counselor terminates the session and sends the other five children back to their regular classrooms. He detains the agitated child and telephones the child's mother to come to school. While waiting for the mother to arrive, the counselor attempts to calm the agitated child in the privacy of his office.

d− Charles requests membership in an ongoing group to overcome his feelings of shyness. The counselor knows that two members of the group are currently engaged in a conflict involving intense expression of anger and resentment. Without considering the possible negative impact of this interaction or forewarning Charles of the current issues in the group, the

counselor agrees to Charles attending the next session. Charles seems increasingly anxious as the session continues and the conflict unfolds. At the mid-session break he informs the counselor he "doesn't want group counseling" and leaves. The counselor initiates no further contact with Charles.

*NOTE: This incident is included to highlight the importance of pregroup preparation of clients and the responsibility of adequate follow up after termination. While a case may be made for the effectiveness of expressive behavior in facilitating a person to combat shyness, lack of preparation for this experience and the counselor making no attempt to facilitate inclusion of Charles as a new member in this ongoing group appear to have brought about potentially traumatic results. Readers interested in further information related to group work are referred to Appendix E.*

e+ A counselor is approached by a small business to conduct a stress-management workshop for sales and clerical personnel. The importance of opening communication between these two groups is also emphasized. In the planning meeting, the counselor learns that response to the data of this workshop has been mixed. While all staff members have agreed to attend, some are less than enthusiastic. The counselor develops the plan for the workshop considering both workshop goals and staff response. At the beginning of the workshop ample time is spent clarifying workshop goals and discussing workshop norms. Particular emphasis is given to the individual's right to participate to the level at which he or she feels comfortable. Although participants are encouraged to share to facilitate progress towards mutual goals, the right not to participate in any of the interactive discussion exercises is also explained. Throughout the workshop the counselor is attentive to participants' concerns and frequently asks individuals how the experience is progressing for them. Feedback subsequent to the workshop indicates that the structure and norms allowed individuals to participate comfortably and assisted the group in moving towards its goals.

**B.2. The counseling relationship and information resulting therefrom must be kept confidential, consistent with the obligations of the member as a professional person. In a group counseling setting the counselor must set a norm of confidentiality regarding all group participants' disclosures.**

a+ An elementary school counselor has a client who is the son of his principal. The principal asks to see the interview notes on his child. The counselor indicates that this not desirable on several counts. Instead he discusses the child within the same limits he would discuss any child with a father. (See Appendix A: Section 99.30.)

a– A counselor finds that her former roommate's daughter often drops in for counseling. This girl, a freshman, is concealing her academic difficulties from her parents, and the counselor, believing that the mother will

hold her responsible, writes to her and explains the daughter's deteriorating academic position. She does this with no discussion of such revelation with the student although she has ample opportunity to do so.

b+ Bob comes to the counselor because he is having difficulty interacting with one of his teachers. After discussing the problems the counselor suggests that one effective approach might be a joint meeting of Bob and his teacher with the counselor serving as a facilitator for exploration of the problems. Bob agrees. Two interviews occur in which the three of them discuss the situation. Some understanding of the problem and the identification of ways to work towards its resolution occur. The content of the initial session is not revealed by the counselor to the teacher.

b− A counselor's secretary is so excellent a typist that he hesitates to dismiss her although he knows that she is careless about leaving test data and correspondence on her desk where others might see them. Student assistants and interns are aware of the situation and have been known to return to the office after hours and procure information about individuals they are interested in. The counselor has reminded his secretary periodically, but does nothing further to improve the situation, and the lack of security continues.

c+ A counselor is leading a counseling group. She explains to the members of the group during the first session that everything said within the group is to be confidential. The group agrees to this. One day, while at the student union, she chances to hear one of the group members discussing things that had happened in the last meeting with some of his friends. At the next group meeting the counselor discusses this incident and again stresses the importance of confidentiality in the group. The group reiterates its agreement with this norm.

c− A counselor in a family counseling service discovers that a bowling teammate is the estranged wife of one of her clients. As their contact increases the counselor finds herself drawn into discussions of the husband's feelings about his wife. Because the counselor hopes to bring about reconciliation of the couple, such discussions are viewed as a likely source of help.

d+ New clerical staff members are hired to work in a counseling agency. As part of the training program, a session is devoted to the discussion of the importance of the confidential nature of the counseling relationship. Appropriate management of case files to protect the clients is emphasized. The staff is instructed not to reveal information regarding persons receiving services or the nature of services in response to inquiries made by phone, by letter, or in person. Staff members are instructed to channel any such inquiries or related questions to a counselor designated as responsible for handling any such requests.

*NOTE: A professional person whose responsibilities include the supervision of support staff in counseling agencies must be attentive to the need*

*for training the staff regarding the importance of protecting the identity of clients who choose to enter a counseling relationship as well as protecting the information resulting therefrom. See also Section G, especially standards 2 and 8.*

d – The counselor trainee at a university has held several interviews with the wife of a neighbor who is attending the university and having scholastic problems. As the counseling progresses toward a successful conclusion, the notes and reports need to be typed so the trainee takes them home where they are inadvertently left where a small child borrows a sheet of paper, draws some pictures on the "clean side," then takes it outside to show her friends. A rather curious neighbor returns them to the trainee.

e + A counselor in a family counseling agency receives a phone call from the husband of one of her clients. The husband requests information about his wife's progress in counseling. The counselor suggests that he might ask his wife directly and clarifies the confidential nature of the counseling relationship. At the next session with the wife, the counselor informs her of the phone conversation and they discuss options. Following the client's decision not to invite her husband to a conjoint session at this time, the counselor assists the client in identifying ways to respond to the husband's inquiries and express her feelings about this.

e – Joe, an 18-year-old high school senior, was convicted of illegal possession of controlled substances (drugs) and is now on two-year probation. He is seeing a counselor about his post high school career plans. Joe's probation officer contacts the counselor and requests (demands) a report on the counselor's contacts with Joe. The counselor complies fearing that not to do so might cause the probation officer to file an adverse report on Joe to the court. (See Appendix A: Section 99.30.)

f + A college counseling center director learns during a case supervision conference that a student has been taking drugs and that these drugs are being purchased from another student employed by the college to serve as a student resident adviser. The director of the counseling center has a written agreement with the administration that when a situation exists that involves behavior that may be dangerous and/or seriously improper, the information can be reported to the Vice-Chancellor for Student Affairs in such a manner that the source of the information is protected. The counseling center director reports to the Vice-Chancellor that there is reason to suspect that there is drug traffic in the residence halls in which some staff members may be involved. The identity of neither the client nor the suspected student resident adviser is revealed. The counseling center director emphasizes that this is "hearsay" information from a source believed to be reliable. The Vice-Chancellor and the director agree that this is a situation that merits attention to investigate its authenticity and severity, and to determine appropriate action. The Vice-Chancellor agrees to utilize this information to make a presentation

to the residence hall staff members stating only that a problem with drug traffic is suspected and requesting that any persons knowledgeable about any situations of this nature report the information. Several students come forward with information that allows the judicial processes of the college to act. The counseling center director has no further involvement subsequent to the report of the information that a problem may exist.

*NOTE: Occasionally situations arise where there is a conflict between confidentiality and other obligations of a professional person. This is particularly true when the professional person is also a staff member at an educational institution. The above incident outlines one possible resolution strategy for situations involving conflicts of confidentiality and institutional responsibility.*

f – An assertiveness training workshop is offered through a community counseling service. The workshop uses role play incidents brought to the workshop by participants. Other feedback exercises also involve self-disclosure by participants. No mention is made by the leaders at any of the five sessions regarding the importance of respecting the confidentiality of the disclosures made by participants during the workshop.

**B.3. If an individual is already in a counseling relationship with another professional person, the member does not enter into a counseling relationship without first contacting and receiving the approval of that other professional. If the member discovers that the client is in another counseling relationship after the counseling relationship begins, the member must gain the consent of the other professional or terminate the relationship, unless the client elects to terminate the other relationship.**

a + Susan, a sophomore in college, goes to the college counseling center because she is unable to make a vocational choice. During the first interview the counselor learns that she is currently in counseling with a psychologist at the local mental health center. He explains that he cannot counsel with her unless he contacts the psychologist and obtains his permission. Susan agrees, and after conferring with the psychologist, arrangements are made for the college counselor to work with Susan on her vocational decisions.

After several sessions with the college counselor, Susan begins to discuss some of her personal problems. The counselor reminds her that they have agreed to work only with her vocational problems. After talking it over, Susan says she is more comfortable with the college counselor and would rather see him for all of her counseling. The counselor suggests that she discuss this with the psychologist at the mental health center. The psychologist has no objections to this and feels that it would be a good idea. Therefore, Susan terminates at the mental health center and continues with the college counselor.

a – A counselor is approached by a student who is having difficulty with his parents. The counselor agrees to see him. After several sessions, a close

relationship develops between the counselor and the student, and the counselor is satisfied with the progress the student is making. The counselor then learns that the student has been seeing a private psychologist for some time. The counselor says that she needs to contact the psychologist but the student refuses to give his permission. The counselor likes the student and does not wish to terminate him so she drops the subject.

b+ A student contacts a staff psychiatrist at a college student health service and indicates that he has been placed on antidepressant medication by his family physician because of a recent serious depressive episode. The psychiatrist agrees to provide therapy, to monitor medication, and to work focusing largely on family-related concerns. The client indicates that he is also concerned about his difficulty making friends here at college and coping with the academic demands. The psychiatrist suggests that the client engage in counseling to obtain assistance with interpersonal relationships and to enhance his academic survival skills. A counselor is contacted who agrees to co-team with the psychiatrist. The psychiatrist and the counselor obtain the client's permission to meet weekly to discuss progress to avoid counteracting each other's efforts with the client.

b− A high school girl is at variance with her parents over the strictness of regulations regarding her freedom to come and go as she wishes. The parents are also concerned about her association with schoolmates who may be involved with drugs and whose family is too liberal in their view. The girl goes to both the school counselor and a local public drug crisis center. The school counselor, who does not know that she has gone to the drug crisis center, attempts to counsel her about the dangers of using certain drugs, about understanding her parents' attitudes, and about her responsibilities in the home. The drug center counselor who is aware that the girl has seen the school counselor does not make any effort to contact the school counselor, encourages the girl to leave home and to live with the liberal family. Although the girl's father is persuaded to give his permission for this, the mother is quite upset.

c+ A counselor offers a counseling group experience through a community mental health agency. A client applies for admission to the group and indicates during the screening interview that she is currently in counseling with a counselor at another agency. The group counselor requests permission to contact the other counselor to discuss the advisability of concurrent individual and group counseling experiences for the client. The client agrees. The group counselor and individual counselor agree upon the efficacy of concurrent experiences for this client at this time. Further, the individual counselor supports the group counselor's request that individual counseling not siphon-off issues generated in the group.

c− Robert requests counseling from a community mental health agency counselor. He indicates that he and his wife are involved in marriage counseling as a couple through another agency in town. Robert states that he

is undecided about continuing the marriage and would like to work with the counselor to sort out his feelings and reach a decision. In the meantime he states that he intends to continue the couple counseling. The counselor agrees to provide counseling for Robert without requesting permission to contact the other counselor.

**B.4. When the client's condition indicates that there is clear and imminent danger to the client or others, the member must take reasonable personal action or inform responsible authorities. Consultation with other professionals must be used where possible. The assumption of responsibility for the client(s) behavior must be taken only after careful deliberation. The client must be involved in the resumption of responsibility as quickly as possible.**

a+ The counselor sees a client who has become progressively more disturbed. Finally the client threatens to kill her sister. The counselor tells her that he must inform her family of the seriousness of her condition. He does so, and the family makes arrangements for psychiatric treatment.

a– A client seeks counseling assistance to manage her eating behaviors. During the first two interviews it becomes evident that she is anorectic evidenced by marked weight-loss, hair-splitting, and repetitive gorging and vomiting. The counselor does not emphasize the severity of this condition with the client. The counselor does not arrange for a consultation with a physician to determine the severity of physical deterioration resulting from the malnutrition. Work on the modification of eating behaviors meets with only minimal success.

b+ An eighth-grade girl, one of 10 children from a low economic background, is in a special education class for the mentally handicapped. She is discovered stealing items from the girls' locker room. During counseling, it develops that the girl is concerned about her menstrual cycle. A second session, the next day, discloses that she has frequently had sexual intercourse with her father, witnessed by some of her siblings. The counselor calls in the school nurse to assist in the interpretation of the girl's remarks and to confirm the counselor's understandings of the girl's statements. The school physician is consulted and he confirms subsequently that the girl is pregnant. The counselor and school principal confer with the welfare department. The father is subsequently prosecuted and the children are placed in foster care homes. (See Appendix A: Section 99.36.)

*NOTE: Each state has laws regarding child abuse. Most, if not all, states require that suspicion of child abuse be reported to appropriate state agencies. Often, this may be done anonymously over a "hot line." Each member who might encounter information about child abuse should learn what legal responsibility he/she has for reporting such information. In situations such as this legal responsibility takes precedence over confidentiality based on professional ethics.*

b– The counselor on a staff of a community clinic is seeing a client who believes that he is being threatened by members of a certain religious denomination. The client frequently threatens to set fire to the local church of this denomination. The counselor does not believe that the client will do this although he has made attempts in the past. The counselor pursues his own convictions against the advice of staff members who have discussed the case in a group conference. Subsequently, the client is arrested for arson in connection with a fire in this church.

c+ A boy and his mother confer with the counselor about taking a machine shop course. The mother has told the counselor previously that she does not want any more teachers to know about the boy's problem with epilepsy. When the counselor discusses alternative electives, the boy angrily insists on a chance to try one of the machines to show what he is able to do. After the mother and boy have left, the counselor confers with the principal and school physician in an attempt to assess the probability of the boy having an epileptic seizure while in machine shop class and the probability of his being injured if he does have such a seizure.

c– A high school counselor is contacted by three different teachers in regard to a student. All three report that his behavior in class is normal but that his written material reflects bizarre thinking and a preoccupation with death. He is seen by the counselor who feels he is very disturbed. The counselor senses the uncertainty of the client to pursue counseling and so leaves any decision as to further help to the client to consider. The client says he will think it over. The counselor decides not to consult with anyone pending further word from the client and not to involve the parents or school officials.

d+ Jim tells the counselor that he has planned to kill his sister. Jim is quite well known for emotional outbursts at certain times. He has hurt several people in school during situations in which he could not control himself. The threat is taken seriously by the counselor who pursues in some depth how Jim feels during such emotional aggressive outbursts. Immediately thereafter the counselor arranges a session with Jim and his parents and discusses frankly Jim's recent aggressive outbursts and threats.

*NOTE: A recent California Court ruling may be relevant to this incident: During a counseling session with a psychologist in the university student health service, a client threatened to murder his "fiancee." The psychologist believed that there was clear and imminent danger that the client might do so and, consequently, notified the police who apprehended and questioned the client but then released him. The client then proceeded to murder his "fiancee." The parents of the "fiancee" then filed charges of malpractice against the psychologist. Recognizing that psychologist had acted in good faith and had followed the ethics of his profession to the best of his understanding, the court still found him guilty of malpractice. The court was sympathetic toward the psychologist and withheld any*

*monetary or imprisonment sanctions, but went on to say that merely notifying the police was not sufficient, that the psychologist (or physician or psychiatrist) had an affirmative duty to notify the endangered one (the "fiancee") directly and immediately so that she might take protective action. Whether other courts in the future will make similar rulings is as yet unknown.*

*The court based its ruling on a California statute.*

d – A student is referred to the counseling center by the director of residential life because the student has repeatedly physically attacked her roommate in an outburst of rage while under the influence of alcohol. During an early counseling session, the client states that she is so angry with her roommate that "she could just kill her." Because of the information provided by the director of residential life at the time of referral, the counselor questions the client in detail about the meaning of her statement about her roommate. The client contends that she was just expressing her level of anger with her roommate and that she does not believe that she could ever engage in such a destructive act. The counselor chooses to believe the client rather than the director of residential life because, after all, her loyalty belongs to her client. Counseling is continued in a normal manner. Two weeks later, the client again gets "drunk" and again physically attacks her roommate inflicting injuries so extensive as to require hospitalization.

*NOTE: This standard requires a judgment by the counselor as to the degree of danger that this client poses toward her roommate. Since the information available is in substantial conflict, at minimum, the counselor must consult with her supervisor or fellow counselors regarding this issue. Psychometric evaluation of the client is clearly indicated. The director of residential life needs to be told soon of the counseling center's judgment regarding the degree of danger that the client represents to the roommate so that the roommate can be warned or perhaps moved to another room. Admittedly, mental health professionals have a notoriously poor record in predicting dangerousness. The standard of practice to which we will be held, however, both ethically and legally, is that which any reasonable and prudent counselor would do under similar circumstances. It is the judgment of the editors that any reasonable and prudent counselor would have obtained a psychometric evaluation of the client and then would have sought formal consultation with a seasoned professional. Whether a report is made to the director of residential life would depend on the outcome of the consultation. Also, careful and detailed entries in the counseling record should be made describing each step taken. We know that alcohol abusers often have periods in which they "blackout" and cannot remember what they did during the "blackout." Thus, the client may not be deliberately lying, but is actually unaware that she has physically attacked her roommate in the recent past.*

*We may also assume that the director of residential life is a member and examines her behavior in light of our ethical standards. She acted properly in referring the student who was being abusive to her roommate*

*to the counseling center. She retains, however, the responsibility to protect the welfare of all students living under her jurisdiction. When the counseling center failed to alter the abusing student's behavior toward her roommate, the director of residential life would be obligated to take corrective action to protect the student being abused and to discipline the student doing the abusing.*

e+ A student contacts a college counselor and indicates that he has been feeling despondent over the breakup with a steady girlfriend. He reports that the previous evening he attempted to cut his wrists with a knife but stopped when he began to draw blood. After exploration of his current emotional state, the counselor suggests that he consider admission to the student health service as he cannot state that he will not attempt his self-destructive behavior again. After further discussion the student agrees and the counselor contacts the student health psychiatrist to arrange for admission and evaluation. The counselor also suggests that the student contact his family to share his current concerns and request their support at this time. The student is admitted to the health service for three days. After exploring his concerns with the psychiatrist and his parents, the student is able to manage his emotions to be able to reduce the tendency towards self-destructive behavior. Following release from the health service, the counselor provides assistance to the student to continue addressing his concerns. As part of his agreement with the counselor, the student promises to contact the counselor should any self-destructive impulses recur and before acting against himself again.

e− A counselor is working with a client who reports loneliness, isolation, and meaninglessness. After several months of exploration of these issues and unsuccessful attempts at establishing positive relationships, the client experiences despair. During a counseling session, the client indicates that life seems no longer worth living and suicide appears the only solution. The client refuses to re-evaluate the suicidal intent and leaves the counselor's office. The counselor believes that the client will take his own life. The counselor does not consult with other professionals nor does he make any attempt to arrange for hospitalization.

*NOTE: Counselors should be knowledgeable of state statutes and local procedures regarding clients who indicate clear and imminent danger to themselves or others. State statutes and procedures are to be followed and consultation arranged to determine appropriate action in such instances.*

**B.5. Records of the counseling relationship, including interview notes, test data, correspondence, tape recordings, and other documents, are to be considered professional information for use in counseling, and they should not be considered a part of the records of the institution or agency in which the counselor is employed unless specified by state statute or regulation. Revelation to others of counseling material must occur only upon the expressed consent of the client.**

a+ A client of a vocational rehabilitation counselor is informed that an interview is to be recorded and will be held confidential, to be used only by the counselor and erased after a period of time. Upon completion of the recording the counselor stores the tapes in a locked file, listens to it only in private, makes notes about it, and in a specified time erases the tape.

a− A professor comes to a college counseling center and requests information about a student who has been acting "strangely" in class. The receptionist, unfamiliar with policies related to confidentiality and release of the records, obtains the file from the counselor's office and allows the professor to read it.

b+ In order that the school counselor may have control over the counseling interview notes, a separate locked file is provided for the counselor's office. This permits the counseling notes to be kept confidential from other materials requiring less security.

b− A lawyer contacts a marriage counselor who has worked with a couple regarding resolution of marital discord. The lawyer requests information about the marriage and indicates that he is representing the wife who has filed suit for divorce. He indicates that he will subpoena the counseling records if the counselor does not cooperate via telephone. Deciding that the information will eventually be available to the lawyer anyway, the counselor cooperates and provides detailed information.

c+ A college counselor decides that his client's problem is beyond his level of education and experience. The counselor proposes to the client the possibility of an interview with a private practicing psychiatrist. The client agrees, is interviewed by the psychiatrist, and decides to begin intensive psychotherapy with her.

The psychiatrist believes that confidential information such as personal data, academic achievement, and counselor observations might be helpful in understanding the new client. The psychiatrist fails to obtain written permission from her client to review such information, and the request for the information cannot be met since a written release is the college counseling center policy.

The college counselor telephones the psychiatrist and explains the policy. Following the receipt of the written permission from the client, the material is sent to the psychiatrist.

c− A student meets with a counselor about her recent performance on the Differential Aptitude Test Battery. She complains about having done "poorly" in the mechanical ability sub-test. In an effort to be supportive, the counselor names several students who had also scored low on the mechanical sub-test.

d+ A legislative committee is investigating a state university. As part of the investigation, the committee requests information on the counseling cen-

ter including counseling records. The director of the counseling center provides all information requested except the counseling records. A statement is sent to the committee by the director indicating that counseling records are confidential and that to make these available would be professionally unethical and an unwarranted invasion of the privacy of the students utilizing the counseling center services.

d– Upon completing an interview with a client, the counselor makes a few personal notes that she leaves on her desk in an open notebook. She then leaves her office for a moment. The next client enters while the counselor is out and casually reads the remarks from the open record on the counselor's desk.

e+ A counselor at a county mental health agency receives a telephone request from a client's work supervisor for information about the client's problems, especially suspected alcoholism, which might influence his ability to function on the job. The counselor informs the work supervisor that information about any individual receiving services is released only upon the expressed consent of the individual. The work supervisor presses the counselor stating that he is only trying to help and that he found out that the client was in counseling indirectly. The counselor reiterates the terms for release of information and encourages the work supervisor to discuss the work-related concerns directly with the individual.

e– A counselor is providing services to two clients who are friends. The friends have a disagreement. One client reports the disagreement to the counselor, and they work on strategies for resolution and expression of the client's feelings. The second client raises the disagreement at an interview later the same week. In an effort to open communication between the two friends, the counselor shares the perspective of the first client with the second. This angers the second client, who then questions the counselor as to whether information is being revealed to the first client about her. The client terminates counseling because she states the counselor seems to be "taking sides."

**B.6. Use of data derived from a counseling relationship for purposes of counselor training or research shall be confined to content that can be disguised to ensure full protection of the identity of the subject client.**

a+ A professor of counselor education selects tapes of counseling sessions to illustrate the process of psychotherapy. In one of the tapes the client reveals student and professor names involved in the client's problem. The professor edits out the names mentioned in order to protect the identity of the client and people involved.

a– A counselor travels to another state to attend a conference on the interpretation of psychological tests. During the course of the conference, she presents the case of a client with whom she has previously worked. For discussion purposes she provides copies of the client's actual test results.

Since the client lives in a different state, she does not take the precaution of removing the client's name from all copies of the test results.

b+ Client files are to be reviewed as part of a research project on counseling effectiveness. Counselors are instructed to use pseudonyms or false initials for clients when writing the counseling records. Before the case record review, the researcher examines all materials and marks out any information included accidentally or peripherally that might allow for identification of any client.

b− In an article in a state rehabilitation journal, a counselor discusses several case studies in relation to a new intervention technique. One of the cases involves a disabled teenage male who is the son of a leading political figure in the community. Readers who are familiar with the counselor's residence can easily identify this client as the mayor's son.

**B.7. The member must inform the client of the purposes, goals, techniques, rules of procedure, and limitations that may affect the relationship at or before the time that the counseling relationship is entered.**

a+ A counselor-trainee at a mental health agency explains to her clients at the first counseling session that she is a trainee and that she will be available to provide services under supervision for the duration of the semester for which she is enrolled. She invites clients to ask any question or seek any clarification related to her status as a trainee or the limitation of her one-semester contract with the agency. She obtains written permission from clients to tape the interviews. She invites clients to express any concerns related to her status or ask any other questions that may come up over the course of the counseling relationship.

a− A college senior applies for counseling help with an emotional problem precipitated by her broken engagement. She is obviously distraught. The counselor wishes to record the interview. Anticipating possible refusal on her part, he conceals the recording microphone under the table. After several interviews this young woman seems to be making progress until she inadvertently learns that most of her discussions are being taped, whereupon, she abruptly terminates counseling.

b+ A client seeks assistance to control his intense interpersonal anxiety that occurs whenever he takes a woman out on a date. The counselor explains to the client, following discussion of the concerns, the approach she would like to pursue. She explains that she would like to teach him relaxation techniques to be utilized to decrease his anxiety while assisting him to identify and alter self-statements that exacerbate his feelings of anxiety. She also proposes developing a graduated series of homework activities that will assist him in establishing relationships with women. The counselor answers the client's question about the approach and agrees to periodically check with him about his satisfaction with the progress of their work together.

b – An adolescent client is working with a counseling center agency staff member. This young man expresses concern that no one should know anything about his concerns, especially his feelings about his parents. The counselor tells the client that no mention of these concerns will be included in the case file and agrees not to staff the client in supervision as the client knows is standard procedure at this agency. The counselor maintains a case file referencing parental concerns and staffs the case as usual, omitting details of their discussion not to do this. The client comes to the center in obvious distress while the counselor is out of town. The counselor's supervisor meets with the client to provide assistance and reports his knowledge of the client's concerns from the counselor. The client becomes agitated and states that this is one more incident "proving" the untrustworthiness of adults.

c + Joe comes to the counselor looking quite subdued in comparison with his usual extroverted self. He says that he has done something quite wrong and wants to confess. The counselor points out that if it is something that severely violates school rules, it needs to be reported to the principal of the school. They discuss this, but Joe still wants to get it off his chest. He says that he has participated in the costly school vandalism incident in cafeteria and is ready for whatever punishment is to be meted out. The counselor convinces him to discuss his part in the vandalism with the principal, which Joe subsequently does.

c – Kristin sought counseling because of continuing problems in relation to her father. She reported witnessing several incidents as a young child of her father physically abusing her mother. Following Kristin's exploration of her concerns, the counselor decides that it would be helpful for Kristin to identify her feelings and confront her father. The counselor has Kristin outline her feelings and then suggests that she mail these to her father and request that he call her with his reactions. Kristin questions the utility and productivity of this because she perceives her father to be a volatile person. Following Kristin's decision not to mail the letter, the counselor indicates that he is unwilling to continue working together because he believes Kristin does not really wish to address her concerns.

d + A high school senior asks for an appointment to see a counselor to deliver some information. The boy states that he has learned that the daughter of an important person in the town is in serious trouble, but that he cannot tell who or what the trouble is unless the counselor promises to keep it in the strictest confidence and "not tell a soul."

The counselor informs the boy that he certainly will treat any information that he receives in the most confidential manner and that he would do everything possible to make sure that no innocent parties are involved or hurt; however, he cannot agree to terms such as those proposed by the student. He suggests the student elaborate on his concern for total secrecy so that they can determine the best course of action for the student to take.

d – A college counseling service arranges for all initial interviews to be conducted by intake counselors. A student arrives at the counseling center in tears. Because the student is in such distress the intake counselor decides not to explain center procedures at the beginning of the interview but to help the client to express his concerns immediately. During the final phase of the interview the counselor explains that center procedures necessitate the client receiving services from a counselor other than the intaker. The client states that he cannot bear to "go through the whole explanation again" and refuses to return for counseling.

e + Sarah, a middle-aged woman, seeks counseling about her problem of recurring depression. The counselor discerns that her depression is related to difficulties in her marriage. He explains to her that she may experience changes in the nature of the marital relationship as the result of counseling. He warns that it is possible that she may eventually wish not to continue the marriage. He says that she needs to be prepared to deal with possible changes in her relationship and suggests that she think it over for several days before making a decision whether to continue counseling.

e – A counselor is a staff member of a women's center on a university campus. The university policy for the women's center limits the number of counseling sessions that can be conducted with any individual client to three. The purpose of this limitation is to identify the women's center as a place for support, not an adjunct mental health center. The member does not inform clients of these limitations at the outset and, where counseling for longer than three sessions is necessitated, informs the clients of her willingness to meet regularly and just "ignores" the rules.

**B.8. The member must screen prospective group participants, especially when the emphasis is on self-understanding and growth through self-disclosure. The member must maintain an awareness of the group participants' compatibility throughout the life of the group.**

a + Several women apply to become part of a group being formed for women who are 30 or over and searching for educational, occupational, or personal alternatives from their present situations. The counselor interviews each applicant to the group and gives each a personality inventory. Severe personality problems are revealed in the case of one of the women. The counselor suggests to her that her needs might be better filled by a different type of group or some other services that are offfered at the counseling center. She is then referred to another counselor in the center to further explore her needs and the services available.

a – An elementary school counselor wishes to begin working with first- and second-grade students who are exhibiting deviant behavior. The counselor has decided to use a group approach. Because of a time conflict that does not allow for interviewing of prospective students, the counselor asks

each teacher to identify two students for inclusion in the group. Groups are formed based upon teacher selection.

b+ The counselor is conducting several small personal growth groups composed of senior high school student volunteers. The principal has observed various members of these groups and feels that they are benefitting a great deal from their group experiences. When Sam comes into his office for his fifth truancy violation of the semester, the principal offers him the option of becoming a member in one of these groups or being suspended. Sam chooses to attend a group and is sent to the counselor's office to make the necessary arrangements.

The counselor talks with Sam who appears quite hostile and defensive. He says his only goal for being in such a group is to keep from being "kicked out" of school. Sam further states that he will go to the group but that no one can make him talk about his feelings or anything like that. Even though the counselor realizes that Sam may not be allowed to remain in school, a report is made to the principal and to Sam that the group members have different goals than Sam has and the recommendation for Sam to participate in any of the existing groups cannot be made, but that individual counseling is available at this time.

b– Two members of a therapy group engage in conflict constantly during group meetings. Even though this situation has occurred for several weeks, they have obeyed the rule established by the group about no physical violence in the group. Consequently, the facilitator chooses not to intervene even though they continually threaten one another. She believes that, given enough time, the group itself will deal with this situation. After one exceptionally intense session, the two members exit together and engage in a scuffle on the parking lot and the police have to be called to break up the two men. When the issue is brought up at the next meeting, one of the group members points out that the two really didn't violate any rules of the group since they were on the parking lot when the incident occurred. Therefore, it is suggested the group move on to other things and let the two men handle their own problems. No one objects, so the facilitator goes along without saying anything, believing the group has chosen to deal with the situation as it wants to.

c+ Two counseling support groups with 12 members in each group are being conducted. The counselor facilitating these groups believes that an important factor in the success of group experiences is the trust and acceptance level among group members since self-disclosure is encouraged. After four sessions one of the groups is floundering. Using sociometric devices the counselor identifies two sub-groups and suggests that they might accomplish more if they split into two groups and meet at separate times. All group members are agreeable and many state they would feel more comfortable in a smaller group.

c– A community counseling center offers a parent effectiveness training group. During a group session one member becomes very distraught over prob-

lems with his daughter and explores in great detail the undercutting of his efforts with this young girl by his wife. Members of the group and the counselor facilitate this man's discussion. The group never returns to the exercises planned for the evening. The next day the man calls the counselor and reports that he feels he said too much and is angry that the counselor kept probing him, which continued the discussion. He feels unable to face the rest of the group members and indicates he will not return to the group.

d+ A couples enrichment group is offered through a local church as a community service project by a counselor who is a member of that denomination. During the third session it becomes obvious that one couple is utilizing the group not for enrichment as stated in the screening interview, but to decide about the viability of their marriage. Following this session the counselor speaks with the couple about arranging for marriage counseling at a local agency. It is agreed that the couple may continue for the final two sessions of the group with the stipulation that they agree not to focus on their problems in a manner that is disruptive of the group as they did during the last session.

d– A trainee in a college counseling center is forming growth groups to serve as the subjects for her dissertation research. Following the initial screening interviews, it becomes clear that she will be five members short of the number needed to complete the research study. Rather than delaying the start of the project, she reviews those persons whom she had originally excluded by the established criteria and chooses several members to fill the groups.

**B.9. The member may choose to consult with any other professionally competent person about a client. In choosing a consultant, the member must avoid placing the consultant in a conflict-of-interest situation that would preclude the consultant's being a proper party to the member's efforts to help the client.**

a+ Susan reports considerable conflict at home with her stepmother. She indicates that they always seem to be fighting. Over a period of five counseling interviews no progress seems to occur. The counselor decides to call a conference to discuss this case with other staff counselors. The conference produces several different perspectives than those the counselor has considered. A variety of suggestions and alternative counseling strategies are generated.

a– A counselor at a small college is extremely perplexed about a rather hostile male client. She seeks consultation with the Dean of Students, who is also the chief discipline officer of the college. In the process of consultation, the counselor reveals that this client is one of the students who broke into a professor's office and stole some examinations as a way of getting even with the professor for being such a tough grader.

b+ A counselor is working with a senior high school student who is experiencing a high level of stress and finding himself increasingly unable to cope. His father has been fired from his job, his brother is about to be expelled from school, and this student is feeling so despondent that he reports contemplating suicide. The counselor contacts the school physician for advice and confers with other counselors in the department about the case. It was agreed that the counselor should request the principal to consider disciplinary sanctions other than expulsion of the brother in order to relieve some of the stress the client is feeling.

*NOTE: Members occasionally find themselves in situations where a conflict of interest may occur between the client's needs and the fair and uniform application of regulatory codes. It is reasonable for members to explore genuine alternatives following consultation. Decisions regarding the application of disciplinary measures are typically not the responsibility of the counselor and the counselor's role is limited to suggestion and exploration of alternatives. In the opinion of the editors there is substantial disagreement about the extent to which counselors should engage in such active advocacy. This incident is presented because it highlights a reasonable consultation process but should not be interpreted as a mandate for system intervention in all such cases.*

b– A client writes letters to a counselor between sessions. Over a six-week period, these letters become increasingly bizarre in character evidencing suicidal ideation and a desire for self-punishment. The counselor discusses these letters with the client who indicates that these are a ventilating device. The client refuses to discuss issues related to these letters and requests that the counselor continue providing assistance in developing assertive behaviors. The counselor informs the client that he intends to review the client's progress and the letters with the staff psychologist. The client insists that the letters are for the counselor's personal use only. The counselor agrees to continue with the assertion training for which the client originally sought counseling and does not seek consultation in regard to appropriate case management.

*NOTE: The counselor's decision not to reveal the information without the client's consent is consistent with standards B.5. The counselor, however, is in violation of B.4 and B.7. This situation, because of the danger to the client, demands consultation.*

c+ A college student seeks counseling because of recurrent anxiety episodes. She reports dizziness, increased shortness of breath, and fear that she is losing her contact with reality. The counselor suggests that she have a complete physical examination by the health service physician. With the student's agreement, the counselor arranges for the examination. The counselor also consults with the staff psychiatrist to discuss intervention strategies and receives additional suggestions.

c– A counselor is told by a client that other clients with whom she talked while waiting for her appointment told her about a party held by another staff counselor for his clients in his home over the weekend. Deciding that if the counselor chooses to party with his clients it's none of her business, the counselor does not consult with other professionals although she questions the appropriateness of the party.

*NOTE: The reported incident raises question of the appropriateness of the other counselor's behavior as specified in B.11 and the responsibility of the counselor to whom it was reported to act as outlined in A.3.*

d+ A student is referred by a faculty member to the college counseling services because she is in extreme academic difficulty and unable to function adequately in her field placement necessary to complete her degree. In addition to working regularly with the student in counseling, the counselor consults periodically with the faculty member to monitor the student's placement progress with the client's consent. With counseling and faculty support the student is able to meet the demands of her coursework and field placement.

d– An elementary school counselor is working with a child who is distraught over the recent death of a pet. The counselor wonders about the intensity of the child's reaction. The counselor has never worked with a case of this type before but does not seek consultation with another professional who has had such experience, nor attempts to find any related publications that might assist in developing an appropriate intervention approach.

*NOTE: This incident suggests some violation of principles A.4 and A.7 in that the counselor seems to be attempting to provide services for which training and qualifications are not possessed.*

e+ A staff counselor in a halfway house experiences intense levels of anxiety when working with a client during a morning counseling session. The client has previously reported a fear that he will not allow himself to express issues of real concern. In response to probing by the counselor during the session, the client denies any particularly anxious feelings. Following the session the counselor consults with the staff receptionist and inquires about her interaction with the client when he came for this counseling session. The receptionist reports that the client was abrupt and that the client was fidgeting and paced the waiting area before his appointment. The counselor decides to call the client who then indicates that he is feeling some acute distress and a second appointment is scheduled for later that day.

e– During sessions with a female client, the counselor trainee finds himself frequently experiencing strong feelings of attraction. Rather than discussing this situation in weekly case supervision to find some resolution, he brags to his fellow trainees about working with a real "turn-on."

*NOTE: In addition to not seeking appropriate assistance, the counselor seems to be violating A.8, which demands that the counselor be aware of the intimacy of the relationship, maintain respect for the client, and avoid activities that seek to meet the counselor's personal needs at the expense of that client.*

f+ A community mental health agency counselor is providing services for Alan, who is concerned about his lack of interest in sexual intercourse with his wife. Alan relates his concerns to his strict religious upbringing. In order to better assist Alan, the counselor contacts a minister of Alan's faith, inquires about that church's views on sexuality, and requests any information that might assist in working through situations such as the current one.

f– After a particularly distressing session with a client, a counselor contacts a staff colleague who she knows has had extensive experience with problems of the type the client presented. The colleague responds that he has enough cases of his own and that the counselor should find someone else with whom to consult.

*NOTE: Although there is no mandated responsibility to serve as a consultant to any other professional who seeks one's assistance, it seems reasonable that if consultation is to occur, every professional has some reciprocal obligation, especially in a setting in which staff members are on salary rather than on a fee-for-service basis.*

**B.10. If the member determines an inability to be of professional assistance to the client, the member must either avoid initiating the counseling relationship or immediately terminate that relationship. In either event, the member must suggest appropriate alternatives. (The member must be knowledgeable about referral resources so that a satisfactory referral can be initiated.) In the event the client declines the suggested referral, the member is not obligated to continue the relationship.**

a+ A counselor has had three interviews with a client. Over the course of these interviews it becomes evident that the client's problems are more extensive than those with which the counselor feels competent to work. After careful consideration, the counselor decides that the client would benefit from long-term intensive therapy, which the counselor does not feel qualified to provide. The counselor informs the client of this decision and offers to refer the client to a qualified therapist. The client refuses to accept the suggested referral. The counselor explains that it is necessary to terminate the relationship and does so.

a– A counselor is working with a student who is distressed about her family situation, which involves alcohol abuse. The counselor has no training in alcoholism counseling but feels confident to work with any student. The counselor continues to work with the student, unaware that a local family

services agency has an excellent, extensive program for teenagers from families with alcoholism problems.

b+ A counselor for the juvenile court is working with a young man who has serious problems relating to authority figures. This young man constantly ridicules, insults, and otherwise expresses disdain to police, administrators, and other authority figures with whom he interacts. The counselor feels increasingly negative towards the client, finds it difficult to work with or around this attitude, and subsequently refers the client to another counselor.

b− By the end of the third interview a counselor trainee identifies that the client attempts to dominate and control the relationship rather than address her concerns. The trainee wonders if the client's problems are more complex than they appeared at first.

During the subsequent appointment the trainee suggests that he feels unqualified to provide further help and that another qualified counselor has been located and has agreed to work with the client.

This discussion brings about apologies by the client, statements of extreme self-abasement, and threats of self-harm if the proposed change takes place. Reluctantly the counselor agrees to continue working with the client.

c+ After two interviews a counselor realizes that the degree of hostility and resentment and the tendency to act out that the client is expressing is beyond his expertise to manage. The counselor asks the client's cooperation in locating someone who can provide the professional assistance that the client seeks. The counselor refers the client to a psychiatric clinic and makes the necessary transfer arrangements.

c− After a period of six months, a counselor in a college counseling center reviews the case progress of a certain client and decides that no progress has been made. The counselor feels increasingly frustrated with the client. Deciding that the relationship will be terminated in five weeks with the close of school, the counselor continues to meet with the client and "just talk" rather than confronting the issue of no progress towards goals. At the end of counseling, the client reports extreme dissatisfaction with counseling and indicates that he will not consider returning or recommending the center.

d+ A high school counselor is contacted by a girl who has just learned that she is pregnant. While discussing the situation, the counselor finds that the girl is very ambivalent and confused about her alternatives. There are several agencies in the community that assist women with problem pregnancies, and each has a somewhat different value approach to unwanted pregnancies. The counselor assists the client in exploring her own values regarding her situation. The counselor then presents information about each agency. The girl decides which agency she will contact

following discussion and agreement that one agency seems to provide assistance consistent with the client's values.

d – In a series of contacts with her resident adviser, a college freshman living in a large residence hall has repeatedly expressed fear that she is a kleptomaniac and may steal from the other students. The resident adviser realizes that she does not have the competency to assist this student but does not arrange for a referral to the counseling center because she is not aware that the college has a counseling center.

e + A college freshman goes to the counseling center to get assistance on improving his study skills. The student feels inadequate to handle college work and mentions that it was once suggested that he had dyslexia. He feels that although he was able to get through high school, the "dyslexia" is interfering with his college work. The counselor refers the student to a diagnostic evaluation clinic in the local school system as a first step in fully understanding the problem.

e – A client seeks assistance from a community counseling agency because she has been having dreams which she finds extremely frightening. The staff counselor assigned to the case is aware that another staff member has significant experience working with dreams. Following discussion of the client's concerns during the first part of the initial interview, the counselor decides to accept this client and work with her regarding her dreams in order to get some experience in dream work.

**B.11. When the member has other relationships, particularly of an administrative, supervisory and/or evaluative nature with an individual seeking counseling services, the member must not serve as the counselor but should refer the individual to another professional. Only in instances where such an alternative is unavailable and where the individual's situation warrants counseling intervention should the member enter into and/or maintain a counseling relationship. Dual relationships with clients that might impair the member's objectivity and professional judgment (e.g., as with close friends or relatives, sexual intimacies with any client) must be avoided and/or the counseling relationship terminated through referral to another competent professional.**

a + A college student approaches his psychology teacher after class and indicates that he has been extremely depressed lately and even thinking about suicide. He asks the teacher for help since she is also on the staff at the college counseling center. The teacher expresses her concern but explains that she believes it would be inadvisable to work with him as a client since they already have a teacher-student relationship. She recommends another counselor and walks with him over to the center to assist him in arranging for an interview with this counselor.

a – Jan has been working at a family counseling agency as a secretary for the past year. She has seen a counselor for whom she works help many young

couples who have come in wanting marriage counseling. Jan's husband has agreed to try counseling to work out solutions to some of the problems with their marriage. Jan asks the counselor to provide marriage counseling. The counselor declines because she is her work supervisor and suggests two other marriage counselors in the area. Jan pleads with her to change her mind since Jan's husband already knows the counselor and likes her. The counselor reluctantly agrees to see them.

b+ A counselor receives a frantic phone call from a personal friend whose wife has been working with another counselor for 18 months. This woman's counselor has been out of town on vacation for almost three weeks. During that time the client has become increasingly troubled and has spent the last two days refusing to get out of bed. The friend is frightened and asks the counselor to come talk with her just this once. Her counselor will be back next week, but the friend indicates he is afraid to wait that long. The counselor agrees to see her on an interim basis until her counselor returns.

b− The director of a community mental health center also has a private practice. One of the staff counselors approaches the director and asks for an appointment during the private practice hours. The counselor reports that assistance is needed because of incidents involving alcohol abuse. The director agrees to see the counselor later that week.

c+ A staff member of a counseling agency is concerned about his increasing feelings of isolation. He approaches a fellow staff counselor and shares his concerns. After reporting that it is helpful to air his feelings, he suggests that they meet weekly for lunch to work on his concerns. The counselor indicates that she is willing to be a good friend and listen, but believes it important that he explore these concerns in a formal counseling relationship. She explains her concerns that their friendship and collegial relationship will interfere with her ability to be objective and provide candid feedback. He agrees and they discuss counselors that he might contact for assistance.

c− A residence hall director has training in counseling. He is approached by students living in his residence hall who would like to address some personal concerns. The students indicate that they would like him to be their counselor. Although the college has services available through the counseling center, the residence hall director arranges weekly sessions for counseling.

*NOTE: The ethical dilemma arises out of the potential conflict of interest that could occur with the residence hall director serving as both counselor and college administrator. The ethical principle involved is quite explicit that when an alternative counseling professional is available, here the college counseling center, referral is necessary. Situations may arise that warrant counseling intervention and in which referral is not available or*

*appropriate. In those cases it would seem important for the member to orient the client to those areas of personal revelation that might create a conflict of interest for the member.*

**B.12. All experimental methods of treatment must be clearly indicated to prospective recipients and safety precautions are to be adhered to by the member.**

*NOTE: In this particular context, the phrase "experimental methods of treatment" presumably refers (a) to those treatments that at the time of use are essentially nonstandard practices in the profession, the efficacy of which are not proven either by research or by usual practice by members of the profession; and (b) to those treatments which at the time of use for a specific condition by any given member are novel in his or her repertoire of treatments for that given condition. With this clarification, it is implied that certain treatment methodologies may be correctly considered "experimental" even though their intent and usage is quite divorced from the realm of formal research and experimentation. Given this broad definition, it is difficult to specify situational examples since inherent in the definition is the premise that what is "nonstandard" for the profession will constantly be changing and what is "novel" for any given member will be also.*

*Having identified a treatment methodology as being either experimental personally or experimental in the profession, it is the responsibility of the member to inform any prospective recipients that the given treatment is "experimental" in practice and clearly indicate any consequences that might result from its use. Even if such consequences are not explicitly known but are suspected, the member should bring these to the attention of the recipient.*

*As a second measure, the member should adhere to safety precautions that would assure a reasonable and prudent use of the method. A treatment that might have been included in this classification is the use of encounter group procedures with acutely depressed clients.*

a+ College counseling/service counselors offer a group counseling experience for students experiencing eating disorders. Students presenting with symptoms of anorexia nervosa and bulimia are informed that this group will be conducted by professional staff members and may offer assistance in addressing their concerns. Staff members are clear to the students seeking this experience that there is no definitive resarch findings regarding the efficacy of this approach. Students are further cautioned that should the group experience exacerbate their problems alternative assistance will be arranged. Staff members are clear with the clients that this group is an attempt to find a more effective treatment approach for the concerns which they are experiencing.

b+ A therapist in a community mental health agency is contacted by a client seeking hypnosis for pain control for a debilitating degenerative disease. The client indicates that assistance is unavailable through other agencies in the community and that he cannot afford to seek the assistance which is available in a large metropolitan area several hours away. The therapist

explains to the client that she has studied hypnosis techniques, has utilized these with clients for anxiety management, and is willing to provide services to see if these hypnosis techniques assist the client in pain control. The therapist also agrees to consult with other practioners regarding additional potentially effective intervention stratiges.

c+ A client consults a therapist regarding high levels of anxiety experienced in social situations in which others become inebriated. The roots of the problem are traced to adolescent experiences with an alcoholic parent. The counselor indicated that systematic desensitization may be an effective approach in altering the intense anxiety experience. The counselor explains that the application of this procedure is one with which the counselor is familiar from reading and workshop training but one that has not actually been utilized in working with previous clients. The client agrees to proceed with systematic desensitization understanding the counselor's practical inexperience.

*NOTE: The critical factor in each of these incidents is the honesty on the part of the practioners about the limitations of the state of the professional knowledge and/or their own professional experiences in the area of services which they are negotiating and undertaking to provide.*

**B.13. When the member is engaged in short-term group treatment/ training programs (e.g., marathons and other encounter-type or growth groups), the member ensures that there is professional assistance available during and following the group experience.**

a+ A couple participated in a marriage enrichment weekend retreat offered by a local institute. As part of the program each couple was interviewed by a counselor prior to and two weeks subsequent to the weekend session. During the weekend retreat, a cofacilitator was available for individual consultation. After their final session, the couple decided that they wished to pursue further counseling and were referred to another marriage counselor for services.

a− An interview preparation workshop is being conducted at a community career development agency. During the section of the workshop in which video-taped practice interviews are replayed for participants, one man becomes visibly anxious and agitated. The facilitator decides to proceed with replay of interviews as scheduled and suggests to the man that "he get a cup of coffee from the receptionist and try to calm down." The man leaves the workshop and does not return. When the man's interview replay occurs, the facilitator skips to the next one. No further contact is initiated by the counselor.

b+ A widow sought an encounter-type group experience shortly after the death of her husband. Because she was experiencing a great deal of loneliness and confusion, she indicated that she believed being with others would help. The group experience, however, was intensely painful for her and

resulted in her breaking into uncontrollable tears on several occasions. When the group facilitator spoke with her, this woman reported that she just didn't seem able to "deal with people yet." The facilitator suggested that she work with another counselor who was available for individual assistance and postpone her decision about participating in another group until she had explored her current concerns.

b– Dick participates in a marathon group held at the college counseling center. During the group meeting, he begins to feel "like he is falling apart" and tells the facilitator he wants to leave. The facilitator encourages him to stay and give himself a chance to "get it together" with the help of the group. Dick stays but feel no better. When the facilitator speaks with Dick near the end of the marathon, he suggests that Dick probably just had a bad group experience this time, and perhaps he should try another marathon group next month. No other assistance is offered.

c+ Several members of a six-week assertiveness training group reported that the experience had been extremely valuable and that they wished to pursue developing their assertiveness skills. The group facilitator suggested several alternatives. These members decided that the reading list that the facilitator had made available would meet their needs for continued personal development. The facilitator reminded the members that additional contact or referral information could be arranged at any time in the future should additional assistance be desired.

c– A rape education program is offered through a local rape emergency assistance center. This two-hour workshop includes slides that depict the brutality of rape and the vulnerability of women to this experience. No discussion of reactions that participants might experience as a result of this presentation is included. Neither does the presenter identify ways in which participants might arrange for professional assistance or debriefing following this presentation.

**B.14. Should the member be engaged in a work setting that calls for any variation from the above statements, the member is obligated to consult with other professionals whenever possible to consider justifiable alternatives.**

a+ A college adopts a policy that requires the director of admissions to refer applicants for admission with borderline qualifications to the counseling center for an evaluation of their probable success in college. The counseling center is required to send a written evaluation of each such applicant to the admissions committee. The director of the counseling center calls a staff meeting to discuss implementation of this policy. The staff determines guidelines that will protect the client while adhering to the college policy. Since the counseling center is generally viewed by students as a place to go for voluntary, confidential counseling, guidelines require each counselor handling such referrals from the admissions office to inform each applicant of the precise reasons for the referral and that a written evaluation will be sent to the admissions committee. The counselor is also

required to inform the applicant that it is possible to refuse to submit to the probable success evaluation, but that the admissions committee might take a dim view of such refusal.

a – Upon being hired for an industrial counseling position, the counselor discovers that notes of all counseling interviews are expected to be maintained in the employee's permanent record. The counselor objects because this violates confidentiality. The counselor is informed that this is standard company policy and compliance is expected. The counselor acquiesces to the employer's demands. Conference notes are read by those who have access to permanent records, including many persons who may not be party to the counselor's efforts to assist the clients.

b+ A counselor is required to keep counseling files open to teachers in the school. The counselor meets with a client who begins to reveal very confidential information. The counselor interrupts the student, reminds the student that the counseling files are open to teachers, and suggests that the client limit their conversation in light of this procedure. The client is very distressed, can't attend to the consequences of talking about these concerns, and opts for a decision to continue without full appreciation of the possible disclosure via files to teachers. Following this counseling session, the counselor discusses this dilemma with other staff counselors. Together they agree that the counselors might act in the client's best interests by writing case notes in the most general manner possible, omitting any specifically revealing or unnecessary detail.

b – In a high school situation a counselor is required to have an open file of the student's standardized test scores available to all faculty members. Any teacher is allowed to utilize these scores. No control is placed upon the use of tests or test scores within the school. Neither are teachers provided any training regarding the tests utilized in the school. The counselor opposes this practice but feels that nothing should be said to the principal because it is the counselor's first year. It is apparent that test scores are not always utilized in an appropriate manner as incidents are reported periodically by both students and parents.

c+ When being interviewed as a counselor for a student religious center, the counselor applicants are informed by the directors that their organization has beliefs strictly opposing abortion. The directors state their expectation that counselors will not advise any client to have an abortion and, in fact, will strongly urge individuals to consider any alternative other than abortion. The counselor who accepts the job has discussed this position with other counselors and has decided that he can work compatibly with the center's philosophy and goals. In order to safeguard the integrity of the client and to avoid initiating a relationship in which he may be unable to be of professional assistance, the counselor informs all clients concerned with unwanted pregnancies about the center's position. Clients are then given the opportunity to choose whether they want to continue counseling in the center or seek assistance from some other agency.

# Section C: Measurement and Evaluation

**The primary purpose of educational and psychological testing is to provide descriptive measures that are objective and interpretable in either comparative or absolute terms. The member must recognize the need to interpret the statements that follow as applying to the whole range of appraisal techniques including test and nontest data. Test results constitute only one of a variety of pertinent sources of information for personnel, guidance, and counseling decisions.**

**C.1. The member must provide specific orientation or information to the examinee(s) prior to and following the test administration so that the results of testing may be placed in proper perspective with other relevant factors. In so doing, the member must recognize the effects of socioeconomic, ethnic, and cultural factors on test scores. It is the member's professional responsibility to use additional unvalidated information carefully in modifying interpretation of the test results.**

a+ The director of counseling for Redridge High School District is interested in the student's correct understanding of the purpose and results of academic achievement tests. She devises this plan. One month prior to the administration of the achievement tests to the sophomore class, she and her three counselors meet with all the sophomore English teachers. (English is required for all sophomore students.) They agree that the counselors will come into each English class a week prior to the test administration and discuss the purpose of this particular test series and answer any questions the students might have. They further agree to return to discuss the meaning of test results once they have received the students' scores. At that time, they will invite students who have further questions to make an appointment to speak with their counselor individually.

a– The Pierpont High School is equipped with an intercommunication system. A week prior to the test administration date, the counselor makes this announcement over the intercom: "Attention Junior Class! Monday, Oct. 12, you are required to assemble in the high school cafeteria to take the Test of Academic Skills and Knowledge." The students have no idea what the purpose of the test is or for what the results will be used. After the test results are received by the counselor, she once again makes an announcement over the intercom: "Your test scores have been received and you can make an appointment with me to find out your results, if you're interested."

b+ A male client expresses a desire to become a nurse. He has some doubt, however, about the appropriateness of this field for himself. Therefore, the counselor suggests he take a vocational interest test as an aid to his decision making. The test results do not support his expressed interest in the nursing field. The member explains to the student that while the test should not be the sole criterion upon which to base his decision, the results do mean that the student's interests are different from the interests of a recent sample of men who are in the nursing profession.

b− A client has expressed a strong desire to enter an apprenticeship in a local shipyard to become a draftsman. The counselor realizes that the client has scored far below the standard set on the admissions tests by the shipyard apprentice school committee. The counselor reports the client's scores to reflect that he did much better than he actually performed on the battery of six tests, believing that this adjustment is justified because the client has grown up in the "barrio" and as a consequence cannot be expected to score well on standardized tests.

**C.2. In selecting tests for use in a given situation or with a particular client, the member must consider carefully the specific validity, reliability, and appropriateness of the test(s). *General* validity, reliability, and the like may be questioned legally as well as ethically when tests are used for vocational and educational selection, placement, or counseling.**

a+ A vocational teacher requests the school counselor to administer a test in manual dexterity to candidates for a course in auto mechanics. The test, chosen by the teacher, is of unknown validity. The counselor refuses and explains why, offering, however, to help the teacher to choose a test with known validity for this purpose.

a− As part of the application process to become a residence hall assistant (RA), the applicants must take a personality test. The test data are used as part of the selection criteria. Neither the Residential Life Director nor any of her staff have ever done any research to verify if any of the scales are related to overall success as a RA. It is the Director's bias, however, that she wants her RA's to be outgoing. Consequently, any applicant that scores high on the introversion scale is not hired.

b+ In counseling with a university sophomore, a counselor has the Strong Vocational Interest Blank also scored for the Psychology Specialty keys. The student has expressed interest in a career in psychology. In discussing the sophomore's interest similarities, the counselor is careful to distinguish the meaning of the scores on the general occupations from those on the specialty keys with particular attention being given to differences between the reference groups.

b− A 12th-grade client has lived only a few years in this country and while fluent in oral communication has a considerable handicap in interpreting

written English. As part of counseling, the counselor administers a standard academic ability test and interprets it against 12th-grade norms as indicating poor potential for college work.

**C.3. When making any statements to the public about tests and testing, the member must give accurate information and avoid false claims or misconceptions. Special efforts are often required to avoid unwarranted connotations of such terms as *I.Q.* and *grade equivalent scores.***

a+ After the achievement test results for the sixth-grade class have been received, the school counselor, rather than merely sending the scores to the parents through the mail, corresponds with each student's parents. In the letter accompanying the test data, the member explains about the test and indicates she will be available to discuss the results with the parents in person Monday and Thursday evenings next week. In order to emphasize the importance of this information to the parents, the member indicates in the letter that, if for some reason the parents have a conflict with the stated time, to call her and she will set up an individual appointment.

a− A state employment service counselor speaking at the local Rotary Club luncheon indicates that the employment service has valid testing available for any attributes in which employers might be interested. On this basis a number of local businesses refer job applicants to the service for appraisal of such qualities as sales skills, integrity, and public relations skills—attributes for which the service really has no valid measures.

b+ The elementary school counseling staff, concerned about parent misinterpretation of oral reports of the students' test scores, develops a bulletin using a series of questions and answers to communicate clearly the information to be gained from test scores and the limitations to be kept in mind in using test results. Further questions and answers are added annually as the staff encounters further areas needing clarification.

A short description of what each test measures is provided. The student's level of performance is expressed in lay terminology, not psychometric terminology.

b− In revising a standardized achievement test battery, the test publisher decides to change the nature of the norm group from what it is in the current edition of the test battery. The change results in more "difficult" norms. This change in the nature of the norm group is carefully described in the test manual. The test representative considers this information too technical for school personnel to understand or appreciate and fails to call this to the attention of potential customers. One school system changes from the old edition to the new edition, only to find that students appear to score considerably lower on the new edition. The superintendent concludes that the teachers (recently unionized) are simply not working as hard as before. The test representative makes no effort to correct this possible misinterpretation.

**C.4. Different tests demand different levels of competence for administration, scoring, and interpretation. Members must recognize the limits of their competence and perform only those functions for which they are prepared.**

a+ A member who has recently been employed in a community mental health agency is working on her Ph.D. in counseling. She has been acting as cotherapist with the director of the agency on a particularly difficult client. The director suggests the member administer a projective personality test to the client. The member is scheduled to take a course dealing with that assessment instrument next semester but currently knows nothing about it. She tells her director this information, and they agree another staff member will administer the test.

a− A junior high school counselor feels that an individual intelligence test evaluation is needed for one of his clients. Psychologists who regularly do such evaluations are available to the school staff. However, the counselor decides not to wait for that service. He borrows a test kit and tests the student himself even though he hasn't administered an individual intelligence test since he was in graduate school 10 years ago.

b+ A high school counselor requests the local employment service to send a staff member to the high school to test the senior students' academic aptitude for college. The employment service director knows that the tests typically used in the employment service are not appropriate for this purpose and that his staff is not knowledgeable about the level of academic aptitude needed to succeed in the colleges typically attended by the graduates of this high school. Therefore, the director suggests that a college counseling center be contacted to determine alternative procedures.

b− A local insurance official responsible for training new agents requests that a counselor help him interpret the results of some test results he has received from a national insurance association. The counselor has never heard of the tests involved, but feels that he can probably interpret the results even though there is no manual or other data available concerning the tests in question.

**C.5. Tests must be administered under the same conditions that were established in their standardization. When tests are not administered under standard conditions or when unusual behavior or irregularities occur during the testing session, those conditions must be noted and the results designated as invalid or of questionable validity. Unsupervised or inadequately supervised test-taking, such as the use of tests through the mails, is considered unethical. On the other hand, the use of instruments that are so designed or standardized to be self-administered and self-scored, such as interest inventories, is to be encouraged.**

a+ During the administration of a test for a national testing service a breakdown in the clocks causes the time to be two minutes short for a sub-test. The error is discovered a week later when the clocks are used again. The principal is reluctant to report the matter to the testing service, but the counselor insists that it be reported, pointing out how this could adversely affect the total test results.

a− The director of testing at a university is scheduled to administer the LSAT. En route to administer the test, the member has a flat tire. By the time she gets the tire changed she is 30 minutes late to administer the test. The students, who were anxious already, are extremely agitated by the time the member arrives. To offset the students' distressed psychological states, she decides to give the students 30 minutes extra time, beyond that allotted in the directions, to complete the testing. She does not report these events to the testing service.

b+ The member responsible for elementary school achievement testing administers the achievement tests at the time of year in which the national norm group has been tested even though it would have been considerably more convenient to conduct the testing in the following term.

b− Three students are competing for a scholarship offered by a local service club. One of the requirements is that they must take a standardized aptitude test at the school. The counselor places the students in a small conference room, starts them on the test, and sets the interval timer. He returns to the room only to collect the tests at the end of the testing time.

c+ A counselor gives a client who lives several miles away a self-administering interest inventory and tells the client he can complete the inventory at home and mail it back to the counselor. The counselor makes an appointment to interpret the results to the client the following week.

c− A counselor has been seeing a 12th-grade student for vocational counseling. The school term will conclude in five days. The member believes the student would profit from taking a vocational interest inventory that could easily and ethically be self-administered. The student agrees to take the inventory but asks to take it home with her and return it in the morning in order to get the results before school closes for the year. The member decides the student must take the inventory at school under the supervision of a counselor because the member doesn't "trust" self-administered inventories.

**C.6. The meaningfulness of test results used in personnel, guidance, and counseling functions generally depends on the examinee's unfamiliarity with the specific items on the test. Any prior coaching or dissemination of the test materials can invalidate test results. Therefore, test security is one of the**

**professional obligations of the member. Conditions that produce most favorable test results must be made known to the examinee.**

a+ A member's long-time friend has a son who is applying for admission to law school. The friend knows that the member is director of testing at a neighboring university and asks if the member couldn't provide his son with some questions from the law admissions test in addition to the samples already provided. The member responds by telling her friend that ethically she is unable to do that. She further explains that if students don't feel they have performed as well as they could, they are allowed to retake a different form of the test.

a− A department chair telephones a university testing officer wanting to view a copy of the Graduate Record Examination given in his subject area. Although the regulations governing the security of this test are fully explained, and he is given the sample questions provided by ETS, he is not satisfied and demands that the testing officer comply with his request "for the good of the institution." The testing officer allows the chairman to review the test.

b+ A member is administering a high security test of national origin to a large group. A provision for security is that no test booklets are to be taken out of the testing rooms by anyone. One of the proctors starts to leave the room with a test booklet. The member reminds him of the security requirements and has him leave the test copy in the room.

b− Before the administration of an achievement test, the counselor in charge of test administration finds that her office has been burglarized. The vandalism occurs a week before the test is to be administered. Five test booklets are found to be missing. The member and her supervisor decide to proceed with the test administration without notifying the testing company. They are not certain the member remembered to lock the door to her office the night the tests were stolen.

c+ A student is scheduled to take a college entrance examination. The counselor who schedules the examination becomes aware that the student has recently experienced the death of a close family member. Because of the student's apparent anxiety regarding the loss, the counselor suggests that the student postpone the examination explaining that the results could be negatively influenced by the student's anxiety.

c− A member is administering an achievement test to a group of ninth-grade students. Toward the end of the test, the member notices one student who has put her head down on the desk. When questioned, the student replies that she has a terrible headache and feels nauseous. The member accepts the test from this student at the end of the testing period and says nothing about the student retaking a different form of the test when the student feels better. When the test scores are interpreted by the member to the

student's parents, the member says nothing about the fact that the student's ill health on the day of the testing may be partially accountable for the student's unexpected poor performance.

**C.7. The purpose of testing and the explicit use of the results must be made known to the examinee prior to testing. The counselor must ensure that instrument limitations are not exceeded and that periodic review and/or retesting are made to prevent client stereotyping.**

a+ A state employment service counselor, when administering tests to job applicants, is careful to explain the purposes of the testing and how the results may be of value in the applicant's work with the counselor in determining what types of jobs to consider.

a− A businessman calls the Director of the Testing and Counseling Bureau at a local university to see if the Director would administer a battery of tests to five employees who are being considered for promotion with the report of the testing being made to the employer. The Director agrees to do so with the clear understanding that the purposes of the tests will be explained to the employees by the employer prior to the testing. A follow-up reveals that two employees were fired shortly after the testing and that they were not informed of the purpose of the tests before the testing. Shortly thereafter another group of employees were sent for testing. The Director tests this group also.

b+ The nursing school has made an arrangement with the University Counseling Center to administer a vocational interest inventory to all nursing school applicants. The member working with the nursing school is very careful to explain to the admissions official in nursing that the test was not designed to be used in a selection process. He further explains that the test only indicates the similarity of interests between people already in the nursing profession and the prospective students. The admissions official indicates she understands and that the test data will not be used to select students but asks that the results be interpreted to the students after they are admitted.

b− A member in private practice has agreed to administer to her clients a personality test that a colleague is developing. In order to get her clients to take their time to take the test, however, she doesn't mention that this test is only in the developmental stage. She also proceeds to interpret the data as if the test was fully developed and validated.

c+ Elementary school students are given an achievement test when they first enter the school. Students are retested annually, and each student's total testing record is reviewed annually with each teacher to determine educational progress and to make future educational plans for each student.

c− A physically disabled person is applying for vocational rehabilitation assistance to pursue vocational training. The VR counselor obtains

achievement test scores from the client's high school records. Although these scores are five years old, the counselor utilizes them to advise the client regarding his abilities for various training programs.

**C.3. The examinee's welfare and explicit prior understanding must be the criteria for determining the recipients of the test results. The member must see that specific interpretation accompanies any release of individual or group test data. The interpretation of test data must be related to the examinee's particular concerns.**

a+ A member who is the personnel officer for a large department store has been asked by her superiors to do "something" in order to determine which job applicants are prone to tardiness and absenteeism due to hypochondriacal tendencies (calling in sick). Although the member is aware of some personality instruments that measure hypochondriacal tendencies, the member tells her company she will need to put together a research proposal because she is not able to predict absenteeism based on currently available information. The proposal she submits includes the instruments that measure hypochondriacal tendencies and a plan to correlate results with employee promptness and attendance. The member indicates she can have a preliminary report on her findings in approximately 10 months. She further explains that until and unless a sufficient correlation can be found between actual employee performance and test data, no individual employee's test result can be considered relevant to the problem of absenteeism.

a− A job applicant at a state employment service office is tested by a counselor. The counselor determines that the applicant is capable of working at a particular company that hires many employment service referrals. The counselor refers the applicant to the company to be interviewed for employment and mails the test results to the personnel manager of the company without informing the applicant.

b+ A counselor at a college counseling center receives a request for test information from a mental health center regarding a former client. The request is accompanied by a release signed by the former client. Although the counselor is generally certain that there are staff at the mental health center competent to interpret the test results, he makes sure that a complete interpretation accompanies any raw data.

b− A faculty adviser in a graduate program is required by departmental policy to interpret advisory test battery results to his beginning graduate students in counseling. Since the students will all take courses in testing, the adviser feels that the students will benefit from interpreting their own test results. He gives the students the raw test data and recommends appropriate test manuals and books to assist them in their interpretation.

c+ A high school student requests a counselor to evaluate his vocational interests. The counselor administers an interest inventory. However, there

are data in the student's folder from a personality inventory that are concerned with identifying psychopathology. Although the results of the personality inventory are interesting, the counselor feels they do not pertain to the evaluation requested by the student. The counselor interprets the results of the interest inventory and does not mention the results of the personality inventory that were obtained earlier for a different purpose.

c– The director of a community vocational and employment center is interested in his staff becoming more proficient in test interpretation. In order to accomplish this objective, he instructs all counseling staff to administer two personality instruments, a vocational interest inventory, and an intelligence test to all clients regardless of their presenting problems or interests. The director believes that his counselors will become better the more practice they have in interpreting all kinds of tests.

**C.9. The member must be cautious when interpreting the results of research instruments possessing insufficient technical data. The specific purposes for the use of such instruments must be stated explicitly to examinees.**

a+ A counselor administers a newly developed ability test to a prospective college student. The test has been modeled after a highly regarded ability test, but independent predictive validity has not been established. In interpreting the scores, the counselor advises the client that he can only compare his scores with other students, and that he can draw only very limited inferences regarding success in college.

a– A counselor decides that he needs a personality assessment of one particular client. As this counselor has little knowledge of personality tests, he obtains from one of his colleagues the name of a test that can be computer scored and interpreted. Without further investigation, the counselor administers the test and proceeds with his personality assessment of the client based on the computer printout.

b+ The director of testing at a local community college has been contacted by a former professor who is developing a test of academic skills. The professor has asked this former student if he can use the students at the director's college as part of the item analysis group in his test development. The director agrees to do so. He also informs the professor that he will explain to his students that they are participating in the development of this test and that no meaningful information can be given them from this testing.

b– A counselor is mailed a sample copy of a newly developed interest test that is in the process of being standardized. The counselor surveys the contents of the test, is impressed, and decides to use it in vocational counseling with his current clients. The member does not inform his clients that the test results may be unreliable as the test is only in its developmental stages.

**C.10. The member must proceed with caution when attempting to evaluate and interpret the performance of minority group members or other persons who are not represented in the norm group on which the instrument was standardized.**

a+ A transfer student, a Mexican American, is placed in a class for slow learners based on poor performance on a mental ability test. The student has his former counselor contact the new counselor in this regard. The counselor is advised that Mexican Americans are not represented in the norm group for the test in question, that the student has always performed well academically and on the achievement tests used in the student's former school. In light of this information, the counselor agrees to reevaluate the student's class placement.

a− A black student is denied admission to a university because of poor performance on the entrance examination. Even after it is pointed out that a local study has shown that the test has zero predictive validity for black students, the Director of Admissions still refuses to reconsider the student's application.

b+ A member learns from several journal articles that there are several race-related or race-sensitive items on the Minnesota Multiphasic Personality Inventory (MMPI), enough so that standard scoring and norms of the MMPI might not be fully appropriate for use with black clients. The data in the journal articles enables him to adjust the scoring of the MMPI for black clients so that the standard norms and profile can be used.

b− A visually handicapped student applies for admission to a graduate program in counseling psychology. One of the requirements for admission to this program is a Miller Analogies Test (MAT) raw score of 50 or higher. The applicant took the MAT under standard conditions (including time limit). The student scored 32 on the MAT. He appended a note to his application to the effect that in taking the MAT he had difficulty reading the questions because of his poor vision. All other factors in his application qualified him for admission. The departmental admissions committee denied him admission to the program based solely on the MAT score.

**C.11. The member must guard against the appropriation, reproduction or modification of published tests or parts thereof without acknowledgment and permission from the previous publisher.**

a+ By empirical study, a member determines that a measure of academic motivation can be devised by drawing selected items from each of several published personality and interest inventories. She then obtains permission from the several publishers to use these items in her new inventory.

a− An elementary school counselor, finding that his budget for test materials will not permit purchase of the publisher's answer sheets for next fall's

testing program, takes a copy of the publisher's answer sheet to a local printer, who, by a "quick-copy" process, provides the counselor with his needed supply of answer sheets at half the publisher's price.

b+ A member who has authored an inventory of study skills learns that a researcher has mimeographed his inventory with a new cover labeled "X College Educational Skills Inventory." The author contacts the individual indicating the unauthorized use of his inventory would be referred to the ethics committee unless immediate changes are made. The relabeled instrument is withdrawn and the situation rectified to the mutual satisfaction of author and researcher.

b– A member responsible for achievement testing in a school system item-analyzes one of the standard commercial achievement tests and constructs a test for use in the school system, replacing the original test with his adapted version that takes less testing time. The member makes no contact with the test publisher regarding authorization for such use.

**C.12. Regarding the preparation, publication and distribution of tests, reference should be made to:**

**a. *Standards for Educational and Psychological Tests and Manuals*, revised edition, 1974, published by the American Psychological Association on behalf of itself, the American Educational Association and the National Council on Measurement in Education.**

**b. The responsible use of tests: A position paper of AMEG, APGA, and NCME. *Measurement and Evaluation in Guidance*, 1972, 5, 385-388.**

**c. "Responsibilities of Users of Standardized Tests," APGA, *Guidepost*, October 5, 1978, pp. 5-8.**

# Section D: Research and Publication

**D.1. Guidelines on research with human subjects shall be adhered to, such as:**

**a. *Ethical Principles in the Conduct of Research with Human Participants*, Washington, D.C.: American Psychological Association, Inc., 1973.**

**b. Code of Federal Regulations, Title 45, Subtitle A, Part 46, as currently issued.**

*NOTE: At the time this revision of the* Casebook *was in preparation, the most recent amendments to the Final Regulations of basic policy for protection of human research subjects were issued by the U.S. Department of Health and Human Services (HHS) on January 26, 1981, and published in the* Federal Register, *Vol. 46, No. 16, p. 8366 ff. These were amendments to the Code of Federal Regulations, Title 45, Part 46 (45 CFR 46). The general thrust of these amendments were to relax some of the federal regulations pertaining to research with human subjects, especially those pertaining to the behavioral and social sciences where such research normally presents little or no risk of harm to subjects. These amendments became effective July 27, 1981.*

*The most important of these amendments is to exempt from 45 CFR 46 coverage most behavioral, social, economic, and educational research in which the only involvement of human subjects will be in one or more of the following categories: (a) the use of survey and interview procedures, (b) the observation of public behavior, or (c) the study of data, documents, records, and specimens already gathered, perhaps for another purpose.*

*Another major change made by these amendments is to restrict the applicability of HHS regulations to research on human subjects conducted by or funded by HHS. Prior to these changes, all or most research on human subjects conducted by an institution receiving HHS research funds where subject to HHS regulations.*

*A major concern expressed by HHS regarding both exempt and covered categories of research on human subjects in the behavioral and social sciences has to do with the protection of the privacy of the individual research subject. In general HHS requires or recommends that all research data be purged of personally identifying information unless required by the nature of the research such as in a test-retest or a follow-up research design. Also, when the need to personally identified research data no longer exists, the personally identifying aspects of the data pool should be purged. And, the results of such research*

*when published or otherwise made public should never contain personally identifiable data. HHS regulations are compatible with* APGA Ethical Standards, *but FERPA (Appendix A) will give the reader more specific guidelines.*

*These amendments to 45 CFR 46 devote considerable space to the role and functioning of Institutional Review Boards (IRB) whose prime purpose is to protect the rights of potential subjects in human research projects. The membership of IRB's should reflect the interests of the potential human subjects in a research projects and should assure that adequate* informed consent *to participate in the research project is obtained. This requires that the potential research subject be clearly informed in language and concepts that the potential subject can understand regarding the nature of the research project including any benefits and risks to him/her in connection with being a participant. In the event that a member is asked to serve on an IRB, the member should become familiar with the role and function of an IRB. A review of the amendments to 45 CFR 46 will be a significant aid to an IRB member in properly performing his/her duties.*

**D.2. In planning any research activity dealing with human subjects, the member must be aware of and responsive to all pertinent ethical principles and ensure that the research problem, design, and execution are in full compliance with them.**

**D.3. Responsibility for ethical research practice lies with the principal researcher, while others involved in the research activities share ethical obligation and full responsibility for their own actions.**

**D.4. In research with human subjects, researchers are responsible for the subjects' welfare throughout the experiment, and they must take all reasonable precautions to avoid causing injurious psychological, physical, or social effects on their subjects.**

a+ An investigator's research protocol requires an extended period of time from each subject. For some subjects the period may be extremely fatiguing and frustrating. The investigator arranges the procedure so that there is a brief rest period at the end of each hour if the subject desires one. Also, ample time is allowed to confer with all subjects as they finish to offer support, answer questions, and provide any information about the study that subjects might desire.

a− A member employs a stress technique to measure interference with problem solving. This is done by means of a group projective technique, the results of which are deliberately interpreted to subjects in a traumatic manner. A number of subjects are disturbed by this experience, although this becomes known only when they seek assistance at the institution's counseling service.

b+ A member is conducting a study to evaluate the impact of learned relaxation techniques upon pain tolerance. The pain tolerance technique uti-

lized is the cold pressor requiring submersion of one's arm in ice water for as long as possible. The member utilizes a stop watch to measure time and sets the maximum time period allowed under the length at which physiologic damage may be expected to ensue.

b– An investigator is interested in studying the impact of jogging upon stress management. A group of dedicated joggers is identified to participate in this project. These joggers are encouraged to run to their limit for a period of one month. No precautions or physical examinations are introduced prior to the investigation.

c+ A member working in a college residence hall becomes interested in conducting a study of social communication among roommates. The most rigorous design for the purpose of this investigation would require splitting certain roommates and reassigning them to other rooms. After considerable consultation, the member alters the design to one that will not disrupt students' social relationships, since the ratio of expected benefit to risk does not justify the original design.

c– An investigator is interested in studying the impact of feedback upon changes in interpersonal communication style. No clear guidelines for feedback are established. Participants in the study are encouraged to be totally honest and not hold back when reporting their feelings about others. The investigator did not monitor the study for any possible negative impact on the subjects. Several participants seek counseling assistance following the study and report that they are increasingly fearful of establishing interpersonal relationships.

d+ A student is conducting a doctoral dissertation investigation into the effectiveness of counseling received at the university counseling service. The procedures involve a session during which counselors and clients review and rate the effectiveness of the counseling experience. Counselors and clients are invited to participate in the study, and those who agree generate the information regarding the effectiveness in a session structured by use of a questionnaire for mutual exchange as both parties reflect upon the counseling experience just completed.

d– A student has completed 24 hours of graduate work and is enrolled in an off-campus practicum. A pilot study for this student's master's thesis is begun at the practicum site. This investigation examines the effect of subtle but definite reinforcement of nonacceptance of test scores by low-ability students. The supervisor is not notified nor are the subjects told that they are participating in an experiment. The experimental treatment upsets several of the clients and causes them to reject test scores that reflect their actual level of functioning. The trainee does not see where this can do any real harm to the subjects involved and feels the experiment is justified because it is research.

**D.5. All research subjects must be informed of the purpose of the study except when withholding information or providing misinformation to them is essential to the investigation. In such research the member must be responsible for corrective action as soon as possible following completion of the research.**

a+ A doctoral student proposes a study designed to investigate the effect of tape recording of interviews on client-counselor freedom of expression and personal spontaneity. The student proposes to withhold information from half of the counselors and clients as to whether a particular interview is being recorded. The proposal involves informing at a later date the counselors, but not the clients, about what has been done. The student plans to confer with the doctoral adviser and the department's human experimentation committee before proceeding.

*NOTE: A study such as the one outlined above is replete with ethical difficulties. The ethical behavior that is highlighted and supported by utilizing this incident is the process; the student openly proposes what is actually intended, confers with the adviser, and submits the study to review by the human experimentation committee before proceeding. While it is likely that the study will not be conducted as submitted, the important behavior is review by and consultation with professionals who will scrutinize and modify the study in light of current ethical and legal regulations for human experimentation.*

a– An investigator is interested in ascertaining the impact of nonreinforcement upon risk-taking behavior. In several general psychology laboratory sections, the teaching assistants are instructed not to orally reinforce correct responses to questions by certain student subjects. The impact of this oral nonreinforcement is judged in terms of willingness to these students to volunteer responses to the teaching assistant's questions. No debriefing session or explanation of the teaching assistant's behavior is conducted upon completion of the study.

b+ Students in an undergraduate course serve as volunteer subjects in an experiment that simulates a counseling interview. Although the experiment is designed to study subjects' reactions to the interviewer, it is desirable that during the experiment the subjects believe the content of the interview to be the object of study. After completing the dependent measures, all subjects are informed of the true purpose of the study, including the reason for the deception.

b– A group of educationally retarded children have been involved in a series of tests as part of a research project. The counselor believes it is important to motivate the children to do their best in the next test. Therefore, in order not to discourage them by giving the true results, the researcher tells them they are doing satisfactorily compared with other students. This misinformation is not corrected when the experiment is completed.

c+ A counselor educator utilizes two groups of trainees as subjects for an experiment in group morale. The experimental situation achieves a level at which it becomes obvious that some of the subjects are unduly disturbed. The counselor educator finds it necessary to use much extra time and energy for the reorientation of these individuals and at the same time not neglect other trainees who are involved in the experiment. The time and energy needed are invested in order to ensure the welfare of all trainees.

c− A state university has conducted a testing program as part of a statewide research project. The father of a student who participated in this program has serious emotional problems and has previously informed the school counselor that he will withdraw the child from school if he feels he has test evidence that proves the child is underachieving. When the counselor receives a report of the student's high ability, the counselor decides to interpret the score to the father to show less ability.

**D.6. Participation in research must be voluntary. Involuntary participation is appropriate only when it can be demonstrated that participation will have no harmful effects on subjects and is essential to the investigation.**

a+ A study is designed to compare the effectiveness of different teaching approaches in elementary school mathematics. The student subjects are grouped according to the already existing classes and will be studying the topic at the same time that they normally would in the curriculum. It is known from previous research that none of the teaching approaches used in the study is ineffective. Thus, the researchers do not ask for voluntary participation on the part of the student subjects.

a− An assistant superintendent designs a study to be conducted in the elementary schools in the school system to investigate the comparative value of various textbooks. Teachers are required to participate in the study, which involves using unfamiliar texts, making major changes in semester lesson plans, and, in some cases, altering established teaching styles.

b+ A study is designed to investigate changes in self-disclosure that occur as a consequence of various group experiences. Some of the experiences used in the study involve emotionally intense and personally intimate aspects of the participants' lives. It is decided that only volunteer participants will be used as subjects. All subjects will be informed of the general nature of the experimental conditions including potentially harmful aspects of such group experiences. As an additional precaution, each volunteer is examined for sufficient ego-strength before being accepted as a subject for this study.

b− A professor is teaching a course in which the students would be suitable subjects for an experiment that is being conducted. The study involves completion of a personality inventory by each subject. The results of the

inventory will be compared with the subject's behavior in small groups held in class. Participation in the experiment is included as a mandatory requirement even though it is not specifically related to the content of the course.

c+ An investigator wishes to study the impact of a coeducational residential living environment upon the academic achievement of college students. A list of grade point averages is obtained for students living in coeducational and same-sex residence halls over a three-year period. Since all information is analyzed subsequent to student graduation and without identification of individual students, individual consent of the student subjects is not obtained.

c− A counseling agency wants to investigate the personality and symptomatic distribution of clients seeking various services. All clients are required to complete an extensive inventory including personality instruments and behavioral data as part of the intake procedures. Clients unwilling to complete the inventory or completing it only partially are refused services until all data has been obtained.

**D.7. When reporting research results, explicit mention must be made of all variables and conditions known to the investigator that might affect the outcome of the investigation or the interpretation of the data**

a+ The research director of a school system summarizes the data of the year's dropouts. One counselor knows that some of the schools include summer dropouts in the reports while other schools do not. The counselor informs the research director of this discrepancy and indicates that the report needs to be corrected.

a− A member has just completed a doctoral dissertation and is preparing an article for publication based on the results of this study. The member's adviser is informed that the computer center at the university reversed the heading on two sub-scales of a test utilized in the study and that this error probably significantly influenced the results of the study. The computer center informs the adviser that they do not have the member's current address for direct contact. The adviser does not notify the student and the uncorrected results are published.

b+ A state employment service supervisor is assigned the task of gathering information for a job analysis on a relatively new occupation in the state. A careful training program is held for the 10 counselors who are to conduct the interviews throughout the state. Before the interviews begin one counselor moves away, one is promoted, one resigns, and another dies. Four additional counselors are assigned to carry out the project, but no comparable training is provided due to the impending deadline. When completing the report of the results, the supervisor makes special mention of the variance in qualifications of the interviewers who collected the data.

b– A master's candidate receives permission to gather data for a thesis from a stratified sample of a large school system. The thesis is designed to study how well school counselors are informed about vocational rehabilitation services available to handicapped students and to determine what referrals are being made. A preliminary investigation of the raw data clearly indicates that schools in the lower socioeconomic parts of the city are referring students for rehabilitation services. The counselors in the upper socioeconomic schools refuse to identify any handicapped students. The master's candidate reports the data in such a manner as to suggest that the results are representative of the entire school system.

**D.8. The member must be responsible for conducting and reporting investigations in a manner that minimizes the possibility that results will be misleading.**

a+ After completing an experiment, an investigator discovers that a highly relevant variable was not controlled. In reporting the results, the relevance of this uncontrolled variable is discussed. The investigator suggests that future research and practice based on the results of this experiment take into account the failure to control this variable.

*NOTE: Typically such a study should not be offered or accepted for publication in a professional journal. In those rare instances where such a study adds to the body of knowledge of the field, however, the report should clearly indicate the defect in design and the implications of such defect.*

a– In conducting the statistical analysis of the findings of a study, a member discovers that the data do not meet the assumptions for the statistical test of significance that is being utilized. Changing to an alternative technique, the results of the data analysis fails to yield significance. Since the original inappropriate technique achieved significance, the results are reported without mention that these data do not meet the assumptions of this statistical test.

b+ A researcher, well known for espousing a particular theoretical position, conducts an experiment that yields findings that can be interpreted as only partially supportive of the espoused point of view. In the discussion section of the report, the researcher interprets the data first in light of support of the espoused theory, then in light of support of another opposing theoretical formulation, and concludes the paper with the statement that the choice of interpretation for these data at this time depends upon the reader's own theoretical orientation.

b– A member completes a study designed to investigate peer-group acceptance of severely handicapped collegestudents, all of whom are confined to wheel chairs. In the manuscript submitted for publication the discussion implies that these data generalize to all forms of disability.

c+ An investigator is interested in obtaining information regarding the resolution of adult developmental crises. A questionnaire requesting information regarding resolution approaches attempted and satisfaction with current resolution status is mailed to clients who sought services for such issues through a community counseling agency. In reporting the results of this survey, the investigator clearly defines the sample population and reports that a 44 percent return rate was obtained from the initial survey, with an additional 22 percent return obtained by phone follow-up. The investigator notes that the reported results reflect the perspective of only slightly more than two-thirds of those initially seeking services for adult developmental crises concerns. Caution in interpreting the generalizability of the results is emphasized because of the incompleteness of the data.

c– A researcher studying hospitalized psychiatric patients finds in the course of the project that about one-third of the subjects are not cooperative and/or are unable to complete the tests being utilized because of limited reality contact. In reporting the findings, the researcher states that the data were obtained on a given number of subjects, but fails to point out that this number reflects only two-thirds of the total defined group. Even though the study deals with social desirability, which is known to be related to patient cooperativeness, the researcher fails to mention any information about the patients who are eliminated from the sample.

**D.9. The member has an obligation to make available sufficient original research data to qualified others who may wish to replicate the study.**

a+ The faculty of a graduate department establishes a policy that all theses and dissertations completed by students in that department include the "raw data" as an appendix so that another investigator may check for computation errors or perform different analysis. Data is to be included in such a way that replication and additional study are possible while allowing the identity of the individual subjects to remain anonymous.

a– A well-known authority in the field of counseling publishes a research bulletin that shows very positive results from the application of the counseling technique that he favors. He fails to report that all clients in the study are preselected according to a very rigorous criterion and is reluctant to make information available that will permit others to replicate the study.

b+ For her doctoral dissertation a student has utilized data supplied by the registrar of a college. The findings of the study are unfavorable to the new instructional media to which the college is committed. This student includes a frank discussion of the limitations of this first study, suggests replication, and offers to make her data available for such an undertaking.

b– In one of the programs of a state guidance conference, a counselor presents a report based upon the reactions of students to a newly devised

student evaluation form. The data seem to indicate that the students in this school are highly enthusiastic about their guidance experiences. Another counselor from a different school obtains permission to use the evaluation form employed in this study. This counselor asks for a detailed report to make comparisons. The counselor involved with the first study refuses because "These are confidential data and cannot be revealed even for research purpose."

**D.10. When supplying data, aiding in the research of another person, reporting research results, or in making original data available, due care must be taken to disguise the identity of the subjects in the absence of specific authorization from such subjects to do otherwise.**

a+ An elementary school principal is asked to submit complete educational and discipline records for students involved in discipline incidents during the past year. The board of education of the district is studying the impact of behavior problems on academic achievement. The principal is unable to contact the parents of five of the students involved because the research request is made during the summer vacation period. The principal submits the records for those students from whose parents written permission has been obtained and indicates that five reports are omitted because the parents could not be contacted for permission.

a− A research project is designed to investigate the relationship between the severity and types of depression as evidenced by certain types of profiles of the Minnesota Multiphasic Personality Inventory (MMPI) and different intervention approaches. Counselors from a community mental health agency are asked to submit MMPI data and completed case reports. Because of a time problem, one counselor photocopies the profiles and completed counseling notes for the cases requested without editing out identifying data. Permission to submit the files is not obtained from the clients involved.

b+ A counseling psychologist engaged in research and training contacts several college counseling centers in a state region and requests the reports of completed cases involving counseling interventions for eating disorders. The psychologist indicates that the purpose of gathering these cases is to compile a data base from which to generate research hypotheses for further investigation. The psychologist requests that counselors submit detailed case reports omitting any identifying information. Cases received that have identifying information are returned to the counselor for revision and/or deletion of the information.

b− A junior personnel worker who has excellent rapport with undergraduates has arranged for a tape recording of a frank discussion by student officers on why students cheat. This is a preliminary step to a preventive campaign. Although students willingly agreed, they do not realize how much information they are revealing about a recent cheating episode. The

student officers are now very vulnerable as a result, but the tape recording is not withdrawn and is presented to the discipline committee.

c+ At the request of an editor of a popular national magazine, a member who has submitted an article for publication uses real names and photographs of persons and events to dramatize the situations describing their rehabilitation. The member asked for and received the written permission of each of the individuals before submitting the materials to the magazine.

c– A counselor is assigned to work with several girls who have been involved in atypical sexual behavior. It is widely known that the counselor is working with this group, but it is not known why. After terminating the assignment, the counselor describes the experience in a professional paper. The paper is published in a professional journal and provides enough information that a local reporter is able to identify the school. The reporter provides a news story for a local paper that enables many people to speculate about the identity of the girls involved.

d+ The board of directors of a community mental health agency is concerned about the effectiveness of services provided. The board requests that the director make available several cases from each of the agency staff members in order that an evaluative study may be conducted. The director refuses this request because client permission has not been obtained. Further, the director questions whether many of the board members who are not mental health practitioners are in a position to understand or evaluate these cases, and even with permission this evaluation may represent an inappropriate violation of privacy. The director suggests that an internal review board be established to study the question of effectiveness of services.

d– A member is contacted by a graduate student who is interested in pursuing the area of research that the member's dissertation study investigated. In an effort to be of assistance, the member sends the complete data file that includes a list of student subjects by name and their scores on various tests utilized in the original study. The member believes that because the subjects signed consent forms to participate in the original study these will suffice for the additional information sharing.

e+ The Dean of Students has urged staff members to present more significant and stimulating cases for staff discussion and evaluation. A discipline counselor who has just completed a difficult case announces that this case is available for description and discussion. Before proceeding, this member questions if it would be stretching permission from the offenders to disclose the entire incident to the 20-member staff. After considering this dilemma, the staff agrees that the case should not be used for this purpose.

**D.11. When conducting and reporting research, the member must be familiar with, and give recognition to, previous work on the topic, as well as**

**to observe all copyright laws and follow the principles of giving full credit to whom credit is due.**

a+ A rehabilitation counselor who engages in periodic research studies makes a practice of reviewing relevant literature before completing the design of a study. This practice strengthens the design and the interpretations along with providing a useful bibliography for future investigations.

a– A member decides to investigate the relationship between self-esteem and job productivity. The ideas that the member has been considering for the past few months are utilized to design the study. No formal review of the literature is undertaken before the commencement of the investigation. The member believes that the necessary references will be found during the period in which the study is being conducted, a time during which additional free time is anticipated to be available for a library review.

b+ A graduate student in college student personnel submits a proposal for a thesis that indicates that previous work published on the topic has not been reviewed. The adviser returns the material for revision. The student then submits a new proposal that adequately reflects the current status of published literature on the topic but fails to give reference to the source material. The adviser stresses this lack, and it is corrected with appropriate citations.

b– In lecturing before local civic and service clubs a member often reports work related to successful solution of local unemployment problems. The member presents this work as original without giving any indication that it has been attempted and found successful earlier in other communities and reported in the professional literature.

c+ A member is conducting a study that involves the completion of a psychometric instrument by the college student subjects. Subjects are allowed to sign up for participation in this study in groups of 10 on certain days at certain times. Several students who would like to participate in this study contact the member and indicate that they would prefer to participate at a time for which the sign-up is at the 10 maximum. The member indicates that this will not be possible because the group size is limited by the number of original booklets of the psychometric instrument that were purchased for use in this study. One student suggests that booklets be duplicated to accommodate larger groups. The member explains that such duplication would violate the instrument's copyright. Arrangements are made for an additional sign-up time that accommodates the student request to participate but utilizes originals of the psychometric instrument.

c– In writing a student development textbook, the author cites references for the research that is mentioned or discussed. In the presentation of

theoretical material, however, it is not clear which theorists are responsible for particular ideas and positions. For the theoretical discussion the author paraphrases and summarizes material without citing references for all the material that is not original with the author.

d+ A member replicates a study that was terminated by the death of the original researcher. In reporting this investigation, the member acknowledges the original researcher as author of the hypotheses and design of the study.

d– A student completes a doctoral dissertation utilizing data that were gathered as part of a long-term study in a large school system. Although the student adds several original instruments, the results are published without acknowledgement of the source of the data or the work of the staff who conducted the study.

**D.12. The member must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to those who have contributed significantly to the research and/or publication, in accordance with such contributions.**

a+ Three members undertake a study of the sexual attitudes of counselor trainees. In reporting the study all members are listed as coauthors. The order of presentation of the authors' names is determined in relation to the contribution of each to the project.

a– In a graduate course in counseling techniques students are assigned a paper involving an extensive review of the philosophy and approaches of an outstanding authority in the field. The instructor of the course requires that the papers become the permanent property of the department and suggests that each student make a carbon if a copy is desired. One student does an excellent job of analysis and presentation of the assigned authority. The student's paper appears with only minor editing in a book with the instructor of the course listed as the sole author. No mention is made of the student's original work.

b+ A graduate student member carries out a major study. This student member is the sole investigator but receives a great deal of direction and assistance from the major professor. Later, when the study is developed into a chapter for a new book, the member acknowledges the contribution of the professor.

b– During a lengthy research study on parent's reactions to home visits, four interviewers and the project director are actively involved. When the final report of the visits is written, the project director does not mention any assistants. The impression is conveyed that the project director carried out all phases of the study alone.

c+ A student prepares a report for presentation to a seminar. This report represents the work of a group of 10 people. A year later the student publishes the data as an article in a journal on counselor preparation. Although the student is listed as the author, the work of the group members is noted in a footnote naming the other nine contributors.

c− A member conducts a study on college dropouts. The registrar of the college provides the enrollment data on the students included in the study. When the member publishes the study in a professional journal the registrar is listed as the coauthor.

*NOTE: The appropriate recognition to the registrar would have been by footnote, not coauthor, because of the limited contribution to the study and the article made by the registrar.*

**D.13. The member must communicate to other members the results of any research judged to be of professional or scientific value. Results reflecting unfavorably on institutions, programs, services, or vested interests must not be withheld for such reasons.**

a+ A graduate student with an original and promising but insufficiently tested research project demurs when urged to publish these tentative ideas. The student is concerned that other researchers may capitalize on the ideas before another project in progress is completed. The student's adviser assists in bringing the student to a better formulation and arranges for the article to be read and criticized by two editorial consultants for a professional journal. The article is published along with some comments by these colleagues.

a− A university professor has carried out a series of well-designed research studies that have demonstrated the predictive power of a widely used test of college ability. The professor uses the results in classroom lectures but has consistently neglected to submit the results for inclusion in professional journals that would make the data available to the field.

b+ A college student personnel specialist conducts a study of the alcohol practices of the institution's students. The results of the survey indicate that students at the college exhibit a significantly higher level of alcohol abuse and related problems than had been suspected. The results are made available in booklet form to all members of the college community along with plans for an alcohol education program to begin to address these concerns. Publication in a professional journal is planned following evaluation of the first year's alcohol education program.

b− One finding in a multifaceted evaluation project is that a program widely used in the state's high schools seems to attract only low-level students. Publication of the results may stigmatize the program and is expected to arouse the anger of teachers and counselors involved in the program.

Because of these concerns, the evaluation team decides not to publish the report.

**D.14. If members agree to cooperate with another individual in research and/or publication, they incur an obligation to cooperate as promised in terms of punctuality of performance and with full regard to the completeness and accuracy of the information required.**

a+ Graduate student volunteers are sought from students in a counselor training program to facilitate growth groups for another student's doctoral dissertation. During the training session for these volunteers, the required activities for the study are outlined and the importance of conducting all activities according to the time schedule arranged is emphasized. Volunteer student facilitators are punctual in arriving for groups, follow the procedures outlined for group activities, keep accurate records following each group session as requested, and return all completed questionnaires within the time frame outlined by the researcher.

a− A member received an initial inquiry regarding willingness to participate in a national survey on professional career development. The member returns this inquiry indicating a willingness to participate. The survey instrument is received several weeks later and notes that the member has been assigned to the project as part of the national stratified sample. The member decides to complete the questionnaire later. One month elapses before the member reviews the questionnaire. Because the instrument requested completion within two weeks, the member discards it, being embarrassed to return it at this late date.

b+ A researcher plans an investigation of the attitudes of clients currently in counseling. The design requires that counselors have their clients complete a questionnaire after each session. A meeting is arranged with counselors from several agencies and college counseling centers to explain the project and what is required of the counselors. The counselors who agree to participate take the responsibility of collecting the data from their clients accurately, consistently, and in the manner prescribed by the researcher.

b− A research team plans a project in which each member is responsible for collecting data in a particular school system. The school systems were chosen because together they are representative of the schools in the state. One of the members decides not to gather data from the school system assigned but from another system in which the member serves as a part-time consultant. The member makes the change based on the claim of more extensive knowledge of the second school system. The research team is not consulted regarding this change.

c+ Two professors agree to divide tasks for a book they are coauthoring. One of them chooses to do a critical review of the research literature. Shortly

after beginning the project, the professor questions if the colleague is not more adequately prepared to review certain areas. Rather than continue the task, the professor discusses this situation with the colleague and suggests that they reconsider the work that each should perform in preparing the book.

c – One researcher who is part of a team project takes responsibility for preparing a review of the literature. In pursuing the review, the material on the topic is found to be much more extensive than any of the researchers had anticipated. Without informing the others, this member decides to review only one aspect of the material that is believed to be the most essential and is related to this member's area of expertise.

**D.15. Ethical practice requires that authors not submit the same manuscript or one essentially similar in content, for simultaneous publication consideration by two or more journals. In addition, manuscripts published in whole or in substantial part, in another journal or published work should not be submitted for publication without acknowledgment and permission from the previous publication.**

a+ A member completes a study on the impact of a program on academic skills upon college student attrition. The member identifies the journals appropriate for publication of this article, rank orders these journals in terms of desirability, and submits the article to the journal viewed as the most authoritative. The member decides that if the article is not accepted by the journal to which it has been submitted, it will be sent to the next journal on the list and this process will continue until the article is accepted.

a– An article on counseling efficacy is submitted by a member to a major professional journal for publication. Questioning the article's acceptability in relation to the rigorous criteria utilized by the journal's editorial staff for selection, the member revises the article to focus on an instrument developed for use in this study. This revised article is submitted to a journal known to be interested in publishing new psychometric instruments. The revised article is submitted before a decision is received from the journal to which the original article was submitted.

b+ A member expands a work on adolescent development published as a journal article into a chapter for a new book on developmental theories. The member negotiates with the original journal publisher regarding release and acknowledgement of various tables from the original article reproduced in the book chapter.

b– Subsequent to the publication of a research article, a member replicates the study with additional variables. The member submits the article to another journal without receiving permission to include graphs published in the original article. The member believes that acknowledgement through citation is sufficient.

# Section E: Consulting

***Consultation*** **refers to a voluntary relationship between a professional helper and help-needing individual, group or social unit in which the consultant is providing help to the client(s) in defining and solving a work-related problem or potential problem with a client or client system. (This definition is adapted from Kurpius, DeWayne. Consultation theory and process: An integrated model.** ***Personnel and Guidance Journal,*** **1978,** ***56,*** **335-338.)**

**E.1. The member acting as consultant must have a high degree of self-awareness of his/her own values, knowledge, skills, limitations, and needs in entering a helping relationship that involves human and/or organizational change and that the focus of the relationship be on the issues to be resolved and not on the person(s) presenting the problem.**

a+ A member who is Assistant Director of Student Development on a university campus has become acquainted with a representative of the U.S. Department of Labor. The representative knows the member is an expert on women's issues. The representative asks that the member act as a consultant at the regional conference of union apprenticeship directors. The unions have not been as successful as they had hoped in recruiting women to their apprenticeship programs. While the member is an expert on women's issues, she knows very little about unions. She agrees to work with the apprenticeship directors, however, with the understanding that the representative from the Department of Labor will send out a letter of inquiry to the apprenticeship directors asking them to respond to questions regarding their difficulties. Additionally, she goes to the University's Director of Labor Relations to discuss his ideas for her presentation.

a– A member is asked by a large corporation to deliver a series of workshops on developing understanding between able-bodied and handicapped employees. The member agrees even though she personally believes that there is too much emphasis being placed on promoting handicapped individuals and feels that handicapped individuals as well as blacks are in competition with women in the job market. During the workshops she pursues her hidden agenda of making her audience more aware of women's past and current struggles in various employment settings. By the end of the workshops the employees feel they know more than they ever wished to know regarding women's struggles but very little more about relationships between the able-bodied and handicapped.

b+ The president of a publishing house is concerned about the unexpectedly low sales of one of the new academic achievement tests published by the organization. A member is brought in as a consultant. The president suggests that there seems to have been some personality conflicts among the people in the sales department. After talking with many of the sales personnel and the director of sales, the member finds a great deal of animosity by the sales department toward the president. The sales people are frustrated because they feel they're expected to sell so many different tests that they are unable to do justice to any of the instruments, much less this new test with which counselors are unfamiliar. They can say nothing good about the president. The member meticulously writes his report to the president in factual, unemotional terms. He indicates to the president that in his judgment one of two decisions need to be made: (a) the sales force needs to be increased or, (b) the instruments available for sale need to be placed in priority order so the sales force will know where to place their maximal efforts. The member does not mention the negative attitude of the sales force toward the president under the presumption that these attitudes will improve when the recommended changes are made.

b− The board of directors of a community agency are unhappy with the heavy use being made of the organization by clientele who are on drugs. They hire a member who is in private practice in the community to investigate this problem. In his report to the board the consultant explains that the director of the agency believes treating adolescent drug abusers is a top priority. She does not further explain, however, that all the data available in the community indicates a very high and increasing use and abuse of drugs by adolescents.

**E.2. There must be understanding and agreement between member and client for the problem definition, change goals, and predicated consequences of interventions selected.**

a+ A member who is the Director of Guidance for a suburban school system is asked by the principal of a neighboring school system to act as a consultant to his school regarding a problem that has developed between his counseling staff and members of the faculty. Because of animosity that has developed between the two groups, the principal believes the students' needs are not being met. In meeting with representatives of the faculty, the member is told that they (the faculty) are very pleased that the counseling unit is going to be phased out! In meeting with the counseling staff the member is told that they (the counselors) are pleased that the consultant is going to "educate" the faculty as to the counselor's role. The member then goes back to the principal with this information and asks for a reaffirmation of her purpose for being there. The principal does so reaffirm. The member suggests they call a meeting of herself, the principal, the faculty representatives, and counseling staff to outline the goals and define the problem the member will be working with them to solve.

a− A member is asked to be a consultant to a Vice Chancellor for Student Affairs at a neighboring college. The Vice Chancellor thinks it's time to reorganize his division. The member, after having talked with department directors, staff, and students truly sees no reason to reorganize. Rather than conveying that information to the Vice Chancellor, he writes a vague report that he believes will please the Vice Chancellor.

b+ A consultant to a large company finds himself in conflict with top management in regard to the aims and objectives of the counseling he is offering to an employee. This employee has had some serious problems of adjustment that obviously have reduced his job efficiency. The local manager informs the consultant that he has lost confidence in the employee and suggests that the consultant "counsel" the employee to resign and find another job. The consultant realizes that there are some company politics involved and delays suggesting to the employee that he resign. The company manager interprets the consultant's behavior to mean that he does not accept company "policy." Shortly thereafter the employee is discharged. The consultant confers again with the management regarding their mutual roles and goals and realizes their expectations are incompatible with his own and resigns.

b− A consultant on testing accepts the role of assisting schools in selection of the most reliable and valid measures of academic ability. The consultant has a personal and financial interest in one test battery and recommends adoption of this battery by the schools. The schools want a thorough evaluation of all available measures in terms of relative values for their use. The consultant tends to reiterate his recommendation and makes relatively little contribution regarding merits or limitations of other available tests.

**E.3. The member must be reasonably certain that she/he or the organization represented has the necessary competencies and resources for giving the kind of help that is needed now or may develop later and that appropriate referral resources are available to the consultant.**

a+ A former client of a member in private practice is the personnel director of a major corporation. The president of the company has asked the personnel director to put together an educational program for employees regarding disabled individuals in the work place. The personnel director goes to the member and asks if he will serve as consultant on this project. The member responds by saying that really is not his area of expertness but refers her to a colleague at the university who is in charge of the rehabilitation counseling program.

a− A member who is a counselor educator is asked by a former student to speak at his company's year-end banquet on the topic of "The Benefits of Marriage and Family Counseling." The company's production has been affected negatively because of family problems that many employees have

been experiencing. The member accepts the offer of $150 to make this speech even though she realizes that this area is not one of her areas of expertness. There are any number of people in the community who are more knowledgeable than she on this topic, but she does not mention this.

b+ A university professor accepts a position as consultant to a research study. She understands that they need help on the measurement and evaluation part of their study. After several meetings it becomes clear that they expect her to be able to provide them with explicit technical help with computer procedures. She does not possess the knowledge needed; therefore, she resigns as a consultant and provides them with the names of several colleagues who have the necessary skills.

b− Because of the emergence of new governmental programs in the area of selection and training of the culturally deprived, Professor X is sought as a consultant on the training program. He is attracted for many reasons and accepts a consultant's position although he lacks sufficient knowledge and experience regarding culturally deprived persons. This becomes apparent later when his contribution to the program is appraised.

**E.4. The consulting relationship must be one in which client adaptability and growth toward self-direction are encouraged and cultivated. The member must maintain this role consistently and not become a decision maker for the client or create a future dependency on the consultant.**

a+ The faculty at a university with a developing counselor education program asks two faculty from a well-respected and well-established program to act as consultants to them while they get their program underway. The faculty from the well-established program agree and work closely with the developing program's faculty for five years. At the end of the fifth year when the new program's faculty start talking about plans to get together the following year, the faculty consultants indicate that in their judgment they are no longer needed. They believe that the new program is firmly established and, while they will always be available to discuss better ideas, there is no reason to continue the consulting on an ongoing, organized basis.

a− A member is retained by an employment service to assist them in their professional development, including interviewing skills. The member agrees to the goals and the fee of $200 per day of service. The entire process could easily be completed in five sessions; however, the member purposefully draws the sessions into eight by obfuscating and not moving the group of employees along as quickly as they are capable of moving.

b+ A new consultant to the state department of education finds that various county counseling and guidance services are fiscally and administratively independent of the state department. The consultant is careful to structure her role as one recognizing characteristics peculiar to each county.

She sensitizes each service regarding methods of improvement, offers illustrations of approaches taken by other services, and encourages signs of responsibility-taking by the various services.

b– A consultant is surprised to learn that the top management of an industrial organization is reluctant to assume responsibility for terminating the employment of an experienced middle-level executive. The consultant spends considerable time in repeatedly describing the nature of the organization's operation and the executive's impact upon it. The management understands this but wants more than this from the consultant. The consultant, sensing this pressure, agrees to assume responsibility for recommending the executive's termination.

**E.5. When announcing consultant availability for services, the member conscientiously adheres to the Association's *Ethical Standards*.**

**E.6. The member must refuse a private fee or other remuneration for consultation with persons who are entitled to these services through the member's employing institution or agency. The policies of a particular agency may make explicit provisions for private practice with agency clients by members of its staff. In such instances, the clients must be apprised of other options open to them should they seek private counseling services.**

a+ A director of student development has earned a fine reputation at her university because of her professional competence and helpful attitude toward students. A fraternity is hosting a regional leadership conference for all the chapters of their fraternity in a surrounding seven-state area. The campus fraternity leadership approaches the director to ask if she will be the keynote speaker at their leadership conference. They indicate, of course, they will pay her an honorium. Fraternity advisement is one of the responsibilities of the director's office. The member indicates she will be happy to give the keynote address, but will not accept a fee.

a– During the summer, a counselor who is under 12-month contract to his school advertises in the daily paper that college counseling information is available by telephoning his residence number after 6:00 P.M. He does not identify himself by name or school title. A parent of one of his school clients calls and finds out that little specific information can be obtained over the phone. At his suggestion, she then signs up for a $ 10.00 pre-evaluation session.

b+ A counseling professor receives many requests from students for private counseling, offering to pay for such services. The policy of the professor's university permits any professor to engage in outside consultation or private practice. The professor advises each student requesting private counseling that counseling can be obtained from the university's counseling center at no cost. Of those who insist on counseling with him for a fee, the professor accepts them as clients up to a maximum of 10 at any one time. He uses his office in his home for counseling. He does not accept

students for counseling who are currently in his classes or may be in the future or who are his advisees.

b – A member serves as a consultant to private schools providing vocational training. His function is to examine each school's needs in the area of program and staff development and to report these needs to the school's directors. Although he performs this function competently, he uses his relationship with school staff to recruit clients for his private counseling practice from among the students without advising the students or their families of other available agencies who could perform the same services for them at less cost.

# Section F: Private Practice

**F.1. The member should assist the profession by facilitating the availability of counseling services in private as well as public settings.**

a+ The local Young Men's Christian Association and Young Women's Christian Association decide to cosponsor a counseling center to meet the needs of individuals and families in the area. A counselor educator on the faculty of a nearby university is contacted by the board of directors of both associations and asked to serve on an advisory committee for the establishment of the counseling center. The counselor educator agrees to a three-year term of service.

a− A university counseling center is unable to provide adequate counseling services to meet the needs of all members of the university community during the summer session. University policy designates that students are to be given priority for services. The head of the counseling center instructs counselors to inform faculty, staff, and relatives of university-affiliated persons that they will be placed on a waiting list and provided services as soon as possible although the wait may be as long as three months. Counselors are further instructed to inform clients seeking immediate services of those offered through the county mental health agency. When counselors object to this referral as the only one, the head of the counseling center responds that the counseling center is not in existence to serve as a clearinghouse for all community counseling agencies.

*NOTE: In addition to violating F.1., such a solitary referral mandate would violate ethical principle B.10.*

b+ A young professional who is a recent graduate moves to a community to establish a private practice. The state law requires that private practitioners arrange to receive concurrently or have completed one full year of postdoctoral supervision. The young professional contacts several members to discuss the possibility of postdoctoral supervision. A satisfactory arrangement is negotiated with two members who agree to provide supervision for six months each for a fee thereby enabling the young professional to establish a practice.

b− A professional is considering relocating to a community to establish a private practice. This professional contacts several members to obtain information about the services currently offered in the community in order to make a prudent decision regarding relocation. All members contacted refuse to meet with this professional.

c+ A private practitioner is frequently contacted by clients requesting services for sexual dysfunction. The practitioner does not handle such cases but is aware of a competent private practitioner who specializes in this area. The practitioner is also aware of a program for such concerns offered through the local county mental health agency. Clients are provided with information about both these alternatives and referrals are arranged as requested by the clients.

c– A newly established church-affiliated family counseling center is providing marriage counseling. A practitioner in the community is frequently approached by couples seeking such services, which the practitioner does not provide. The practitioner refers to several other agencies in town but does not seek information regarding this agency as a referral option because the practitioner is adamantly atheistic and believes no worthwhile counseling services could be provided by a church-affiliated agency.

**F.2. In advertising services as a private practitioner, the member must advertise the services, expertise, profession, and techniques of counseling in a professional manner. A member who assumes an executive leadership role in the organization shall not permit his/her name to be used in professional notices during periods when not actively engaged in the private practice of counseling.**

**The member may list the following: highest relevant degree, type and level of certification or license, type and/or description of services, and other relevant information. Such information must not contain false, inaccurate, misleading, partial, out-of-context, or deceptive material or statements.**

a+ In establishing a private practice a member places advertisements in the yellow pages and the newspapers along with mailing announcements to local professionals who might have clients to refer for services. The advertisements and announcements read:

> Susan S. Smith, Ph.D.
> Licensed Psychologist
>
> Psychological Testing — Psychotherapy
> Family, Marriage, and Personal Counseling
> Behavior Modification — Stress Management
>
> Diplomate of the American Board of Examiners
> in Professional Psychology

*NOTE: This practitioner's training and services are adequately reflected in these statements.*

a– The following advertisement is placed in local newspapers by a member announcing a private practice:

> Susan S. Smith
> Master of Counseling
>
> Services for all life concerns
> Counseling experiences designed to meet
> individual needs
>
> Recognized by the American Personnel and Guidance Association

*NOTE: This member's degree, which is a Master of Education degree in counseling, is not accurately represented. The service availability described establishes an unrealistic expectation that the counselor has experience and techniques adequate to addressing any presenting concern. The statement regarding APGA is misleading because APGA currently does not serve as a body granting certification recognition to members.*

b+ A brochure is mailed to local community organizations outlining the programs of a private counseling agency for the coming year. General information about the individual counseling services including the sliding fee structure is included along with a list of all staff members identified by name, services, degree, and state certification held. Specific information on the group and personal development programs offered is presented in paragraph form detailing each experience and indicating cost. All group leaders are identified including degree and certification held. The brochure provides the agency telephone number and encourages individuals to call to receive more extensive information related to any of the information outlined.

b– A member joining a private partnership is relocating from another state. The local regulations require a review of credentials by a state board of examiners and the satisfactory completion of a written licensure examination. The member allows the partner to place an advertisement in the telephone book and send out announcements indicating licensure for both of them as clinical mental health counselors prior to the member's completion of the board review or the examination.

c+ The director of a community counseling agency joins the faculty of a state university and decides to become extensively involved in university teaching and research activities. The agency brochure, letterhead, and other descriptive information are updated to indicate that a new director has been appointed. The former director is listed accurately only as a consultant to the agency.

c – The director of a family counseling services becomes heavily involved in consulting work in the community. It is known that the reputation of the director as an excellent counselor is a frequent reason indicated by people seeking services through the agency. Although no longer actively involved in the private practice counseling services, the director is listed as a staff counselor in all descriptive materials utilized for advertising purposes.

**F.3. Members may join in partnership/corporation with other members and/or other professionals provided that each member of the partnership or corporation makes clear the separate specialties by name in compliance with the regulations of the locality.**

a + Several members join with other professionals to establish a corporation that provides a hospital-based alcohol treatment program. In announcing the availability of services, information regarding the members of the staff designates the separate specialties represented. The roles and services provided by counselors, social workers, psychologists, physicians, and psychiatric nurses are described including the training information on each of these staff specialists by name.

a – Three practitioners incorporate a private family counseling service. Information describing the staff indicates that all are "therapists" providing "psychological" services without any further delineation of professional specialty. These three practitioners include one counselor, one social worker, and one educational psychologist. The practice is established in a state that has licensure for psychologists and certification for counselors. State statute enacting licensure for psychologists specifically prohibits professionals except psychologists holding themselves out to the public by any description incorporating the word "psychological."

b + Two members form a partnership to offer industrial consultation services. One member develops and implements employee assistance programs and supervisor training. The other designs and conducts assessment centers. Both members meet with each prospective client firm to explain the services available, highlight their separate areas of expertise, and assist in the collaborative design of the specific intervention strategies.

b – An announcement is mailed out by two private practitioners in partnership. The brochure describes the types of services available including educational diagnostics and psychological assessment. No information indicating any distinction between the partners is included although only one has the training necessary and, in fact, handles all clients requesting the educational diagnostic and psychological assessment services.

**F.4. A member has an obligation to withdraw from a counseling relationship if it is believed that employment will result in violation of the *Ethical Standards*. If the mental or physical condition of the member renders it dif-**

**ficult to carry out an effective professional relationship or if the member is discharged by the client because the counseling relationship is no longer productive for the client, then the member is obligated to terminate the counseling relationship.**

a+ A member in private practice experiences an increasing sense of existential anxiety when his youngest child enters college and his wife returns to school to pursue an advanced degree. He finds that his ability to be objective and facilitate problem resolution in marriage counseling is hampered by his personalization of the concerns presented by client couples. The member arranges for counseling himself from another professional, examines the impact of his concerns upon his current practice, arranges to refer his three current married client couples, and decides not to initiate any new marriage counseling cases until his personal concerns are more resolved.

a− A private practitioner suffers a stroke that results in partial aphasia. Upon returning to work, this practitioner identifies some problems related to this condition, notably an inability to find the words with which to describe reactions to and interpretations of client concerns. Rather than terminating services or changing to another position in which the aphasia would not so seriously impair performance, the member continues to practice. This leaves the decision to terminate counseling to clients, who eventually decide not to return for additional appointments. Several clients experience distress about deciding to terminate the nonproductive counseling relationship with this practitioner because they recognize the physical debilitation of this member.

b+ A member becomes concerned about a long-term counseling case that seems not be progressing towards resolution of the interpersonal anxiety concerns for which the client sought counseling. The member consults with two other professionals and obtains several new perspectives on the client's concerns. During the next scheduled session with the client, the member discusses concerns regarding lack of progress and outlines several new intervention approaches that might be pursued. The client reports a similar concern about lack of progress and identifies one of the possible approaches as closely aligned with the experience of the anxiety concerns. Because the member is not trained in this particular intervention approach, this counseling relationship is mutually terminated and a referral is made to another professional for further services.

b− A member has worked with a client for several months regarding family problems, especially concerns about parental alcohol abuse. This client contacts another counselor and request services explaining that the relationship with the member has not been productive. This second counselor requests permission, which is granted by the client, to obtain information from the member regarding the first counseling experience. When the counselor contacts the member, the member becomes angry,

states a belief that the counselor is colluding in the client's denial of the problem, and insists that the counselor inform the client to arrange a termination interview. The counselor conveys the information regarding the request for a termination interview to the client who agrees to return for one final contact. After the second counseling relationship is initiated, the client shares the belief that the termination interview was a waste of time and money and only met the needs of the member.

**F.5. A member must adhere to the regulations for private practice of the locality where the services are offered.**

a+ A member currently on staff at a county mental health agency investigates the possibility of private practice in that state. The member contacts the state certification board regarding requirements for private practice. The certification board indicates that a written examination and an oral board examination are required before a permanent private practice certification can be obtained. Temporary certification is available while arranging for these examinations following a satisfactory preliminary review of credentials. The member submits credentials and is notified that preliminary review permits temporary certification. The member establishes a limited private practice after work hours. Arrangements are made for the written and oral examinations for permanent private practice certification.

a− A member currently practices in an institutional setting. Several colleagues discuss the possibility of private practice services with this member. These colleagues either wish counseling themselves or know of persons whom they would like to refer because of their respect for the member's therapeutic abilities. The member establishes a limited private practice. Although state statute requires licensure, the member does not apply. The member rationalizes that licensure is unnecessary in this situation because services will not be advertised and clients will be accepted only by personal referral.

b+ Regulations for private practice in the member's state of residence require a minimum number of continuing education credits over a three-year period. The member conscientiously arranges for experiences that will fulfill these requirements and selects experiences that will enhance the services that the member offers.

*NOTE: State regulations and educational experiences fulfilling such requirements vary. Members should be responsible for obtaining information about applicable local provisions.*

b− State certification regulations require a member to have one year of postgraduate supervision in order to establish a private practice. The member believes this requirement to be meaningless and arranges with another practitioner for nominal supervision of one hour per month.

*NOTE: Both the member seeking such nominal supervision and the practitioner colluding in such arrangement would be in violation of this ethical principle.*

**F.6. It is unethical to use one's institutional affiliation to recruit clients for one's private practice.**

a+ An elementary guidance counselor also has a private practice for family services. In working with several children, the counselor determines that the problems would be effectively addressed utilizing a family therapy approach. The counselor refers families to other agencies in the area and not to her own private practice. The counselor is concerned that her ability to be of assistance to the child in any school situations that might arise would be influenced by a dual relationship as the family therapist.

a– A member is employed as the coordinator for a rape crisis center to train and supervise volunteers as telephone hotline support staff. During an early training session the member announces the availability of counseling assistance through her private practice to trainees who find the training experience distressing. Several trainees approach the member and request services through the private practice that the member maintains. These trainees are accepted as clients.

*NOTE: In addition to the difficulty of recruiting clients through the member's institutional affiliation with the rape crisis center, the member violates principle B.11. The member's ability to provide adequate supervision and evaluation of the trainee's effectiveness as hotline assistance paraprofessionals may be hampered by the counseling relationship and vice versa.*

b+ A counselor employed in a state rehabilitation agency is approached by a representative of a private agency that offers occupational rehabilitation training. The representative encourages the counselor to refer suitable clients to this private agency. The representative indicates that a referral fee will be paid for clients with whom a contract for services is arranged. The counselor explains the ethical problems involved in this plan and refuses the offer.

b– A counselor is employed by a private vocational training agency. All clients who are accepted for training by the agency must have psychological and vocational evaluations performed elsewhere. There are a number of psychological clinics in the area that perform these evaluations with varying levels of services and fees. The counselor is employed part-time by one of these clinics. The counselor makes it a practice to refer all prospective clients to the clinic at which the counselor is employed without pointing out the differences in services and fee structure.

c+ A member is employed as a career development specialist at a community college career development center. The center provides career devel-

opment counseling and workshop experiences. Clients in need of personal counseling are referred to other agencies. (The college does not have a general counseling center.) The career development specialist maintains a private practice that provides such personal counseling assistance. In suggesting service options to clients seeking personal counseling, the member provides information about the options available in the community including his own private practice.

# Section G: Personnel Administration

**It is recognized that most members are employed in public or quasi-public institutions. The functioning of a member within an institution must contribute to the goals of the institution and vice versa if either is to accomplish their respective goals or objectives. It is therefore essential that the member and the institution function in ways to (a) make the institution's goals explicit and public; (b) make the member's contribution to institutional goals specific; and (c) foster mutual accountability for goal achievement.**

**To accomplish these objectives, it is recognized that the member and the employer must share responsibilities in the formulation and implementation of personnel policies.**

*NOTE: This section deals with professional relationships and practices between employers and employees rather than "personnel administration" in the traditional senses of the term.*

**G.1. Members must define and describe the parameters and levels of their professional competency.**

a+ A counseling center at a university has recently been assigned the additional functions of providing psychotherapy for emotionally distressed students and establishing a suicide prevention program. No one on the current staff has primary competencies to perform these functions. Therefore, the director recruits for a professional with the skills to carry out these new responsibilities. A search committee is established that includes a university health service physician, a psychiatrist in private practice, a county mental health association social worker, two university professors from the social sciences, a private practice psychologist, a counseling center psychologist, and two counseling center staff members.

a– A counseling intern in a community mental health agency is asked by the director to complete a psychological assessment of a new client including the utilization of projective techniques. Having no training in projective techniques but wanting to acquire some experience, the intern accepts the assignment without informing the director about the lack of competence to perform the complete assignment.

b+ A large high school decides to install a computer-assisted career information service under the supervision of the associate director of guidance. This member has no knowledge or skills regarding computers. Therefore, this member recommends that she enroll in computer courses at a nearby university during the summer and visit schools with computer-assisted career information services already in operation.

b− The vice-president for student affairs at a university receives numerous complaints from students that the student financial aids office is poorly managed and unable to provide adequate services. After discussing the situation with the current staff, the vice-president decides to appoint a young student affairs professional to take over as director of student financial aids. This young professional is the director of student activities and extremely popular with the students. In response to the appointment, this young professional explains to the vice-president that such a position requires extensive training and expertise. The vice-president states that it will be possible to learn the "ropes" as the year goes along. The young professional accepts the assignment but loses many thousands of dollars in federal funds for student financial aids because of his unfamiliarity with federal programs and the deadlines for applying for these funds.

c+ A member who is a career development specialist is approached by the president of the student art group at a college who requests a program on careers in art. The member indicates a willingness to present information on general career development skills but states a concern that art is a field that has unique career development aspects. The member offers to arrange for members of the local artists community and the college art faculty to discuss specific art career development aspects including portfolio preparation and ways to seek positions through the artistic community. The member presents information including the status of recent art alumni, methods of letter-writing, resume preparation, and interviewing techniques. The student art group president is delighted with the program, which is received enthusiastically by the students.

c− A residence hall director is concerned about the problems frequently experienced by freshmen in making the transition to college. This member decides to establish groups in the residence halls to address such student concerns. These groups are developed on a growth group format involving a two-hour weekly session for the duration of the semester during which students are encouraged to disclose any concerns and receive feedback from other students. The residence hall director insists that each of the 16 resident advisers in the hall facilitate such a group. Neither the hall director nor the residence advisers have background in group dynamics nor any training experience as group facilitators.

**G.2. Members must establish interpersonal relations and working agreements with supervisors and subordinates regarding counseling or clinical**

**relationships, confidentiality, distinction between public and private material, maintenance, and dissemination of recorded information, work load and accountability. Working agreements in each instance must be specified and made known to those concerned.**

a+ The director of a student affairs unit begins each school year by reminding the staff members that consultation is available on an as-needed basis in addition to regularly scheduled supervision sessions. When approached for consultation by staff members, the director makes an effort to be open to the staff member's concerns and to arrange for an extended consultation session at the earlest possible time. The director reinforces staff members for such behavior and affirms their commitment to their work evidenced by seeking such consultation.

a− A student affairs staff member at a college makes it a practice to compare her own performance with that of colleagues including superiors and subordinates. On one occasion when this member disagrees with the way in which her immediate supervisor handled a committee meeting, the member openly criticizes the supervisor to a faculty member who also serves on the committee. The supervisor overhears the conversation and seeks clarification. The member expresses anger to the supervisor and refuses to discuss the situation at that time. Although the situation is discussed the next day with the supervisor setting guidelines for appropriate conflict resolution, a negative interpersonal relationship results. The member's behavior interferes with the supervisor's ability to trust the member and undermines the relationship between the faculty person and the student affairs department to which both the member and the supervisor belong.

b+ The employer at institution X routinely discusses with each prospective staff member the ethical ground rules under which the organization operates and the policies and procedures relevant to the position the person is considering. As a result the candidate has foreknowledge of institutional practices and philosophy, can clarify ambiguities or concerns, and can make an informed decision regarding acceptance of the position.

b− Organization Y has never stated or circulated its ethical policies. The administration relies on the staff members' knowledge of the policies and practice as set forth in the *APGA Ethical Standards*. Actually many breaches of the *Ethical Standards* are common because of ignorance and misinterpretation that would be rectified by printed and frankly discussed policy.

c+ A student messenger in the counselor's office asks the secretary whether a student recently reentering school has been married. The secretary responds by saying that client information is confidential communication. Before this secretary began in this position, the ethical practices relevant to the position were covered by the counselor.

c− A college testing bureau employs several undergraduate students to proctor its group testing programs. A member of the bureau staff happens to hear

one of these students describing his recollection of the test items to several classmates in the cafeteria. The bureau had not provided explicit instructions to proctors regarding matters of test security and confidentiality of records.

d+ A procedure at a college counseling center involves the completion of a weekly report form by all staff counselors that identifies numbers and types of counseling contacts, consultation activities, group sessions, workshops and classroom presentations given, meetings attended, training activities, and supervision received and provided. The weekly report procedure is intended to document counselor performance for accountability purposes and to allow for adjustment of workload to maintain an equitable work level among all staff members.

d− A written residence hall policy requires a weekly supervision session between each residence hall director and the director of residential life. Several weeks into the year one of the hall directors decides not to schedule any more supervision appointments. The director of residential life does not pursue this situation, and supervision is held only on an as-needed basis.

*NOTE: The ethical problem occurs because the institution has an established policy that the members disregard without consultation or any effort to have the policy adjusted to the requirements of the current circumstances.*

**G.3. Members must alert their employers to conditions that may be potentially disruptive or damaging.**

a+ An elementary school counselor has learned from several clients that one of the older students is giving "diet" pills to several younger students in an apparent attempt to curry favors and to play the "big shot." The counselor reports this situation to the principal, identifying the child who may be passing out the "diet" pills by name but without revealing the source of the information. The principal does not ask about the source of the information but responds to the serious potential danger reported. The principal confers with the child's parents and determines that the most probable source of the pills is the home medicine chest. The parents agree to take better security measures at home. The principal has the school nurse brief each teacher about symptoms to be alert to in their students that would suggest diet pill ingestion.

a− A residence assistant learns from several independent sources that another resident, disgruntled because he has been refused permission to move out of the residence hall in the middle of the semester, is assembling explosives in his room. The resident assistant concludes that he should take no action on this information because to do so might cause him to lose credibility in the eyes of residents under his supervision.

b+ A student activities adviser learns from several students' oral reports that a group of unnamed students allegedly has devised a method of cheating on objective examinations that is as yet undetected. This allegation is discussed with appropriate department heads without revealing the identity of the students concerned. A change in examination security practices and a procedure for review of examination papers is instituted to prevent future inequities in evaluating student achievement in courses that might be involved in the alleged cheating scheme.

b− An ambitious Associate Dean of Students has a sabbatical leave authorized for the forthcoming academic year. Sabbatical policies at this institution require an individual to serve the institution for at least one year following such leave. Another student personnel staff member learns that the Associate Dean of Students has already signed a contract at another college for the year following this leave. The staff member informs no one of this, believing the principle involved to be one of personal values and having no ethical implications in a professional sense.

c+ Several graduate students attend a social gathering of college faculty and staff members. At this party several members openly smoke marijuana, which is an illegal substance according to state and national statute. The graduate students become concerned about the impact of such behaviors on the value of their future degree and the reputation of the program. The students contact the department chairperson. The department chairperson issues a statement that such illegal activities will not be tolerated at any department functions; further, the statement declares that individuals involved in any such behavior in the future can expect to have their contracts with the department terminated.

c− A member is told by another staff counselor that a dating relationship has been initiated between that counselor and a client. Not wanting to dampen the counselor's enthusiasm about this budding relationship, the member does not pursue the ethical problems involved in such a dual relationship. The member does not broach any related ethical issues with the counselor nor does the counselor seek consultation with any of the agency supervisors.

**G.4. Members must inform employers of conditions that may limit their effectiveness.**

a+ A placement director finds that a great amount of time is required to contact prospective employers, build relationships, and obtain information about job openings. As a result, it is increasingly difficult to stay knowledgeable about the qualifications and interests of students who have registered with the office for placement services. This situation limits the effectiveness of the services that can be provided, especially identifying students appropriate for specific job opportunities. The placement director proposes to the administration that the placement fee be in-

creased to permit the hiring of a second professional staff member who can become well-acquainted with the registrants' qualifications and interests.

a – A member is being interviewed for a position as psychologist at a school that is experiencing considerable turmoil in relation to the community. This member has taken an active private citizen/parent role in an organization hostile towards many school policies and practices. The member is aware that it may be very difficult to develop satisfactory working relationships with school staff because of these various community activities antagonist to the school. The member does not mention this situation to the principal as these are considered personal and private life activities.

*NOTE: The member is correct in believing that the right to voice criticism of school's policies and practices exists among one's rights as a private citizen. The principal has the duty to employ only those persons who can effectively perform the duties for which they are hired. It is unethical for the applicant to withhold information that has a valid bearing on how well the duties of the job in question can be performed.*

b + A counselor is in the process of divorce proceedings and finds an increasing inability to attend to clients during counseling interviews. The counselor requests a temporary reassignment to other duties not involving counseling contact with clients.

b – A member's father has developed a terminal illness. The member is the only living relative in this situation and feels an obligation to arrange for medical care and provide personal comfort for the remaining few months the father is expected to live. The member realizes that absence from work will be necessitated possibly for several days on occasion. The member does not inform the supervisor of this situation but calls in "sick" whenever the father needs attention.

**G.5. Members must submit regularly to professional review and evaluation.**

a + On the first Wednesday of each month all supervisory level personnel within a particular department meet. During this meeting each describes current activities and receives feedback from the other members present. Any other issues or staff concerns may be raised and discussed at these meetings. Sufficient time is scheduled to allow for maximum exchange of ideas.

a – The Director of the Center for Student Life is obligated to participate in numerous committees and other activities that make significant time demands. The volume of mandatory paperwork requires extra hours of deskwork. To a large extent, the director's secretary manages much of

the schedule of appointments. As a result, regular meetings, including those for review and evaluation, of the staff are frequently cancelled. Unless some pressing problems are brought to the director's attention, the assumption is made that each supervisee continues to perform satisfactorily.

b+ A personnel unit leader meets individually once every six months with each supervisee. At this meeting an evaluation form is completed appraising the supervisee's performance. Discussion on each point covered by the form is encouraged. The evaluation form includes spaces for comments by both parties involved. The completed evaluation form is included in the supervisee's personnel record. Staff members are pleased with this arrangement because they know what is expected of them and how well they are doing.

b− A counselor considers himself in the vanguard of new practices and procedures. Because he believes his ideas are so progressive, he does not expect his supervisor to understand, much less be capable of evaluating his work. He chooses not to reveal details of his client interactions. Instead, he describes his work in the most ambiguous terms and becomes irritable whenever asked for specifics. Rather than disclose his true beliefs and attitude, the counselor cloaks his uncooperativeness by explaining that he is protecting the confidentiality of client concerns.

c+ The chief student personnel officer at a college has served in this position for five years. Desiring a campus-wide evaluation of the effectiveness of the leadership evidenced during this period, this member requests that the president of the college establish a committee to review effectiveness. This committee contacts various faculty, administrators, and students for comments, criticism, and suggestions regarding the performance of this member. The evaluation process provides an opportunity for campus input regarding student personnel policies and procedures established and implemented under the leadership of the member. Several areas of concern heretofore unrecognized are identified as part of this process.

c− As part of the annual review practice for counselors, members are asked to identify strengths and weaknesses and to establish professional development goals for the coming year. One counselor is aware of particular difficulty working with clients reporting borderline disorders. This counselor chooses not to raise this concern for discussion during the evaluation but attempts to remedy this situation through personal reading in the area.

*NOTE: It would seem important for members to utilize regular review and evaluation as a forum for meeting Standard G.4 and to inform employers of conditions limiting effectiveness identified as part of the review process.*

**G.6. Members must be responsible for in-service development of self and/or staff.**

a+ The director of guidance in a school system maintains a continuous emphasis upon increasing professional competencies by various methods including regular meetings, staff development programs, and circulation of written materials. The expectation of developing professional skills and knowledge establishes a climate to which staff members respond with added interest in their own development.

a− State certification requirements for counselors include a continuing education provision outlining methods for acceptable ongoing professional development. The director of a counseling agency believes that this requirement will establish continued staff development. Therefore, the director does not inquire about staff needs or the desire for in-service training opportunities.

b+ Members of a rehabilitation center staff express an interest in establishing regular case conferences to consider problems in interviewing, casework management, and topics of special interest. Although there is a waiting list of clients such a program is implemented. The director establishes this program on the ground that such time will be well spent because the staff will thereby be helped to offer more effective services in the future.

b− The Dean of Students prefers to work with staff members on an individual basis. As the staff grows larger, planning and policy problems become more complex. It becomes evident that information transmission is uneven and ineffectual. Several staff members request regular meetings for planning and policy formation. The Dean chooses to refrain from such meetings because of a personal predilection, and meetings are not held except when crises necessitate an occasional meeting.

c+ The director of a counseling center establishes a policy that requires staff members utilizing center funds to attend professional development programs to present information regarding such experiences to a full staff meeting shortly after their return. This policy provides for all staff members to have their knowledge and skills updated regularly. By this procedure, the director provides for her own development as well as the development of the entire staff.

c− A member requests funds from the department's in-service training budget to attend a professional meeting. This meeting is held in a city where the member has many friends. Rather than attending the professional forums, the member registers for the meeting, attends only the opening session, and spends the remaining two days vacationing with friends.

**G.7. Members must inform their staff of goals and programs.**

a+ The head of a counselor education program views the task of keeping staff members well informed about departmental precedents, policies, prob-

lems, and future development as an important responsibility. In addition to ongoing efforts, this member calls an annual staff retreat during which priorities for the coming year are established, progress of the past year is reviewed, and an opportunity is provided for staff members to exchange views and concerns. The staff is expected to understand the counselor education program, to interpret aspects of the program to others in a consistent fashion, and to share in future program development.

a– The administrator of a counseling agency expects staff members to perform their counseling functions. Beyond counseling responsibilities, this administrator decides that use of staff time is at the discretion of each individual staff member. Although little is known by this administrator about the orientation of staff members to counseling practice or philosophy, rarely are substantive discussions held with them. There are no specified departmental goals that are regularly evaluated and discussed.

b+ An elected student residence hall officer assumes responsibilities that actually belong to the hall director. The student takes an irregular situation in the halls over the head of the hall director to the director of residential life and asks for disciplinary action to be taken. The director of residential life confers with the hall director and finds that the questionable situation would have been handled by that staff member in a quite different and acceptable fashion. The director realizes that the orientation program for the student hall officers has been inadequate and arranges supplementary training sessions using residence hall and other student personnel staff members to clarify policies and procedures.

b– A Dean of Students becomes discouraged about staff meetings held periodically to discuss policy, programs, and goals. Two less well-trained and more difficult staff members tend to dominate these meetings and staff morale is in jeopardy. Several staff members begin to feel that the Dean is unduly autocratic and that these other members along with the Dean form a kind of power elite from which they are excluded. The Dean decides not to call additional meetings as the less uncomfortable alternative in this dilemma.

c+ An annual report is completed by the director of a counseling service. As part of this process each individual staff member receives a copy. A reaction form is also included that is to be completed and returned to the director. In this fashion any concerns about staff goals and programs are obtained from all staff members concerned before establishing plans for the coming year.

c– The chief student personnel officer at a university is considering consolidating the counseling and student health services. Extensive plans are formulated that will affect the operations of both agencies. Staff members at neither agency are consulted regarding this plan, which is submitted to the university board for approval.

**G.8. Members must provide personnel practices that guarantee and enhance the rights and welfare of each recipient of their service.**

a+ The director of the college counseling service is concerned that each client be aware of the extent to which conversations, test data, and counseling records will remain confidential. In an effort to assure that clients understand this clearly, the service policy is posted in the reception room. Copies are also distributed to each counselor and staff member to insure consistent implementation of this policy.

a– The head of volunteer services at an institution believes that all those who volunteer for the programs and activities are highly committed and reliable. After the volunteers are placed, no continuing contact is maintained.

b+ Soon after the coordinator of a student personnel program is hired, it becomes apparent that members of the staff are alienated from each other. This distant feeling interferes with performance and is often conveyed to the program's recipients. The coordinator implements an annual retreat to assist the staff in becoming better acquainted away from job pressures. Biweekly staff meetings are also arranged to air problems and discuss mutual concerns. As a result of these efforts, some redistribution of job responsibilities result, communication increases, and morale improves.

b– After the initial training and probationary period for new staff members at a particular agency, little or no supervision is provided. Each staff member operates autonomously. Procedures for accomplishing tasks are left entirely to individual judgment. No ongoing training or feedback is included in the program.

c+ As part of the responsibilities of staff members at an institution, members are expected to determine and implement an annual professional development plan. Monies are established within the budget to cover expenses for travel to conferences and programs in order that staff members have the opportunity to keep abreast of new knowledge and skills.

c– An institution has developed programs to the point where there are many program coordinators and few personnel available to provide supervision. In an effort to reduce the supervision demands, a policy statement is issued stating that supervision issues should be confined to the hour established for that purpose each week. Staff members are instructed to contact supervisors at other times only when the situation involved is an emergency. Because of this directive, situations arise in which program coordinators require assistance but are left to their own discretion and hesitate to ask for help. Informal consultation and exchange between supervisors and program coordinators is negatively impacted by this policy, which in turn is reflected by a decrease in the quality of the services provided.

**G.9. Members must select competent persons and assign responsibilities compatible with their skills and experiences.**

a+ The chief personnel officer at an institution implements standard search policies to be utilized whenever a professional staff position becomes open. These policies outline the establishment of a search committee composed of representatives of various institutional constituencies chaired by the staff member who serves as the position's immediate supervisor. Advertising takes place in appropriate national and local media. All applicants are required to submit a resume, a letter of application, graduate transcripts, and three letters of reference directly to the search committee. A day-long interview process is established for finalists for the position, during which all search committee members meet with the candidates. The search committee meets periodically during this process to review applicants and final candidates. Institutional staff are pleased with these procedures, which result in careful selection of candidates with the skills and philosophy necessary to contribute to institutional goals.

a− A dean of student services employs an assistant dean solely on the basis of transcripts of academic work plus the description of professional work experience provided in the letter of application. The dean makes no search for references from former employers or academic instructors. The individual proves to have incapacitating personal mannerisms, and the job performance in the position as assistant dean raises doubt as to the validity of the statements regarding prior professional work.

b+ The director of a counseling service arranges to have three practicum students employed on a part-time basis in the agency. Because the students have had minimal experience in counseling, each is assigned a limited caseload. The director arranges for a weekly group supervision of their work along with an individual supervision session with a staff member.

b− A manager at a local employment agency makes a practice of annually reviewing each staff member's competencies with the individual. The manager does this only within the context of the existing job functions. On several occasions staff members inquire about additional job functions for which they feel they may be qualified. The manager refuses to pursue such inquiries, wanting to avoid the additional responsibilities for training and supervision that might be involved if staff members are promoted or assigned additional responsibilities.

c+ A group specialist is hired half-time to conduct workshops and group experiences as part of an institution's employee assistance program. Shortly after this person begins these functions, the half-time staff member responsible for evaluation resigns. Because the group specialist also has extensive background and training in evaluation, these responsibilities are consolidated into a full-time position that this professional is offered and accepts.

c – A personnel administrator hires a former colleague who is eager to return to work following advanced graduate study. This employee is willing to accept a minor position in a field of special interest with the hopes that this specialty might be expanded. Later it becomes apparent that another specialty area is the one to be expanded; the area is one for which this individual lacks training or experience. The employer moves this former colleague into the new and better paying job.

# Section H: Preparation Standards

**Members who are responsible for training others must be guided by the preparation standards of the Association and relevant Division(s). The member who functions in the capacity of trainer assumes unique ethical responsibilities that frequently go beyond that of the member who does not function in a training capacity. These ethical responsibilities are outlined as follows:**

**H.1. Members must orient students to program expectations, basic skills development, and employment prospects prior to admission to the program.**

a+ At the time of inquiry regarding admission to the master's degree program in counselor education, the department sends a descriptive brochure to each applicant. Subsequently, at the conclusion of each student's master's program, the director of student-faculty relations for the department administers an evaluation instrument to each student having completed the program of study. One of the outcomes of this evaluation is the students' lack of understanding of what was going to be expected of them when they entered the program, even though they remembered receiving the brochure. In consultation with colleagues, the member decides to put together an orientation program for all incoming students. In order to accomplish this task most effectively, the member appoints a faculty-student committee to plan the content and format of the program. This group also is charged with rewriting the brochure so that it will communicate more effectively the department's expectations.

a− In the brochure sent to all prospective students by a counselor education department, two master's degree programs are outlined. Plan A describes a 12-month program whereby the student will take practicum during the summer. Plan B describes a more "flexible" program whereby the student finishes the curriculum in 18 months. After the students arrive on campus, the "word" around is that plan B is preferable to A because of the lack of clients during the summer practicum. The faculty also subtly try to pressure students into plan B by suggesting that in order to have a "complete" training experience the student must understand more time may need to be invested. Additionally, the faculty suggest that true professionals are willing to "go the extra mile." The faculty makes no attempt to increase the number of clients for the summer practicum.

b+ Applicants to a doctoral program in counseling psychology are all sent a list of graduates of the program for the last five years, indicating the type of position each holds.

b– A graduate student who has arrived on campus with the intention of specializing in organizational development within a student personnel work program discovers that that particular area of specialization has been dropped by the program because of the loss of the faculty member who taught the necessary courses. His adviser suggests that he specialize in another area.

**H.2. Members in charge of learning experiences must establish programs that integrate academic study and supervised practice.**

a+ A counselor training program includes a full schedule of didactic and practicum courses to give trainees a thorough background. However, applicants' previous experience and training are considered. Substitute electives are allowed so that students can avoid repetition and enlarge their range of relevant subject matter experience.

a– A counselor educator has arranged an excellent but extended program that combines classroom courses with supervised practicum by means of assistantships that carry generous subsidies. Students who wish to earn their degrees in shorter time but without subsidies are allowed to waive practicum work because of the added time that would be required.

b+ Professor Jones, who teaches student personnel administration, has been quite adamant that his student have an opportunity to "translate" the theory he teaches regarding student personnel administration into action. Heretofore, he has tried to accomplish this through setting aside one class period a week to have the students deal with "in-basket" cases (actual problems that occur in student personnel settings). At a professional meeting he learns from one of his colleagues who is responsible for teaching a similar class at another institution, that she requires her students to spend five hours a week working with a student personnel administrator at one of the institutions in the area. Professor Jones believes this is a good idea and adds this to his course requirements.

b– A graduate department offers a two-year master's degree in student personnel work. The department offers no didactic course work in student personnel work, and no course work in behavioral sciences is required. Each student is assigned to a practicum in the residence halls or related student services each semester that he/she is enrolled in the program. The philosophy of the department is "learn by doing."

**H.3. Members must establish a program directed toward developing students' skills, knowledge, and self-understanding, stated whenever possible in competency or performance terms.**

a+ A counselor education faculty invite 10 of its Ph.D. graduates to serve on an advisory committee to the departmental program from which they have graduated. The role of the advisory committee is to advise the

faculty regarding what areas the graduates felt they were fully prepared and what areas they believe could be improved. Because the graduates are in the unique position of translating what they have recently learned through their academic program into on-the-job performance, the advisory committee works with the faculty to establish performance objectives for each course of study.

a– A faculty adviser believes that a certain advisee of his, in order to increase her professional knowledge and skills, needs a certain course. The adviser is aware, however, that students generally are negative and apprehensive concerning the teacher of that course and the methods he uses. The adviser allows the student to avoid this course.

b+ One of the objectives of a doctoral program in counseling psychology is for the graduate to be competent to teach effectively at the graduate level. To accomplish this objective, the program requires each Ph.D. candidate to co-teach a course with one of the program faculty members during which the candidate prepares and delivers lectures, assists in the preparation and grading of examinations, and leads discussion groups in the class.

b– An instructor is assigned to teach a course in "Theory of Group Dynamics." Readings are assigned in group theory. Class time is devoted to self-disclosure exercises in which the student is expected to disclose his/her "inner self" in a small group setting within the class. Grades are based on the degree of self-disclosure. There are no examinations or papers to assess the student's knowledge of theory.

**H.4. Members must identify the levels of competencies of their students in compliance with relevant Division standards. These competencies must accommodate the paraprofessional as well as the professional.**

a+ Members who are on the faculty in a counselor education department are concerned about the level of didactic competency of their students by the time the students enter their practicum experience. The faculty have noticed a reluctance on the part of the students to utilize various tests, even when the client's problem would clearly indicate the appropriateness of such use. The faculty devise a qualifying examination covering counseling theory and practice, tests and measurements, personality theory, and statistics. The faculty decide that each student must pass this examination at a minimal competency level before they will be admitted to practicum.

a– At a university, the women's center attracts many people who want to participate in the center's volunteer paraprofessional program. The director of the women's center is distressed because the paraprofessionals are creating havoc. They mostly come to the center and sit, drink coffee, and gossip. While they have assigned hours and the center depends upon the paraprofessional to be there, they show up at their own pleasure. The

director and her professional staff develop the following five-point plan: (a) Job descriptions for each function in the center are developed, (b) Those who wish to participate in the paraprofessional program are interviewed and the top 10 are accepted, (c) The paraprofessionals are invited and expected to attend staff meetings, (d) The paraprofessionals receive performance evaluations after they have been "on the job" for six weeks, and (e) In the initial offer, the director makes it clear that this experience is similar to a job in that hours will be kept, a performance evaluation will be made, and, if performance is not acceptable, termination will occur. When this plan is presented to the director of student development, the director vetoes it saying, "You can't hold volunteer paraprofessionals to these standards."

b+ At the end of a training program, the supervisor of a group of undergraduates, hired as adjunct counselors in a counseling center, discusses with the group their competencies. He outlines the skills and job functions for which the adjunct counselors are trained, as well as explaining the types of situations in which they are not expected to function. The adjunct counselors understand their roles as information and support-givers, rather than as primary psychotherapeutic agents.

b− A practicum instructor refuses to evaluate the practicum students at any time during their practicum experience, saying that evaluation destroys the rapport and trust that have built up in the practicum group.

**H.5. Members, through continual student evaluation and appraisal, must be aware of the personal limitations of the learner that might impede future performance. The instructor must not only assist the learner in securing remedial assistance but also screen from the program those individuals who are unable to provide competent services.**

a+ The rehabilitation counselor training program stresses small seminars for discussion and tape listening. The more comfortable the group members become, the more the subjects of discussion become the members themselves. One student seeks out his supervisor for counseling. The supervisor refers him to another counselor indicating that such an arrangement is desirable because he already has an instructional-evaluative relationship with him. (See also Standard B.11.)

a− A trainee has exceptional leadership skills with undergraduate student activity programs, but is very inadequate in written communication. In a Student Union cultural project his letter to faculty members soliciting their support draws their ridicule and disparagement because of misspelled words, poor sentence structure, etc. His adviser takes the position that a graduate adviser is not responsible for such subprofessional skills in graduate students and does not discuss the matter with the student.

b+ A young female Ph.D. candidate is very interested in assertion training. As the faculty observe her as she talks about assertion training and par-

ticipate in workshops where she is facilitating assertion training, they become quite alarmed. The young woman has obviously found an "acceptable vehicle" for her gross hostility. Her adviser tries repeatedly to talk with her about her apparent genuine hostility, but she refuses to hear what is being said to her. The adviser staffs this situation with the department's student progress committee. This committee, composed of five of the senior faculty, periodically reviews each Ph.D. candidate's progress. The adviser finally has another session with the young woman and says, "You will need to change and acceptably improve your performance, or you'll be terminated from the program. Which do you want?"

b– A graduate program in student personnel work permits students to continue who can do the didactic academic course work, but who do not show any evidence of a capacity to relate to students within the framework of a helping relationship. They do not feel that they have any right to evaluate the student's personality traits if he is capable of doing acceptable didactic work in the area.

*NOTE: The U.S. Supreme Court case of* University of Missouri v. Horowitz *(1978) is relevant here. After warning and a probationary period in which inadequate progress was made, Ms. Horowitz, a senior medical student with an excellent academic record, was dismissed for reasons of poor personal hygiene and poor peer and patient relations. The U.S. Supreme Court upheld the University's action of dismissing a professional school student for inadequate performance in the supervised practice aspect of the program even though the student's performance in the academic aspects of the program was superior. The court also ruled that the procedures used in dismissing Ms. Horowitz did not violate her due process rights.*

**H.6. Members must provide a program that includes training in research commensurate with levels of role functioning. Paraprofessional and technician-level personnel must be trained as consumers of research. In addition, these personnel must learn how to evaluate their own and their program's effectiveness. Graduate training, especially at the doctoral level, would include preparation for original research by the member.**

a+ A professor in an advanced course in counseling practicum has students who also have completed course work in statistics and research design. He encourages them to develop evaluative procedures for their counseling. Later, as several of his students enter the field, he helps them organize a consortium to conduct a study of the comparative effectiveness of different counseling methods with different client problems.

a– Because of increasing numbers of students and lack of staff, the research technique courses that are required for all doctoral degree candidates are far too large to be well taught. Advisers therefore are very lenient in excusing from this course students who have had any laboratory course (e.g., physics, chemistry, biology, or geography) or experience as laboratory assistant.

b+ A professor feels a responsibility to serve as a "model" for his candidates by engaging in a program of planned research and systematic publication. He encourages his students to design studies that can be carried on in a local setting; he also instructs them in publication techniques.

b– An ambitious department chair announces a curriculum in student personnel administration in a university that is just beginning a graduate program. He knows that the facilities are not adequate to prepare candidates for professional work in statistical methods and research. Lacking the needed courses, he initiates small research projects of his own. The students have great enthusiasm for them, but the projects lack the proper design and statistical treatment.

**H.7. Members must make students aware of the ethical responsibilities and standards of the profession.**

a+ A counselor education faculty believes very strongly in the importance of their students' understanding the ethical standards of the profession. Consequently, during the introductory course in the master's program, the ethical standards are introduced during a one-week unit. Later, when the students are enrolled in practicum, a one-hour course entitled "The Practice of Counseling and Student Personnel Work in an Ethical Manner" is required. Doctoral students receiving their masters' degree from another institution where no equivalent course was offered, are also required to take this course.

a– The teacher of the introductory course in student personnel work ordinarily postpones to the last week of the semester the topic of professional ethics and responsibilities. He believes it is not feasible to present these problems to the beginner. In practice he frequently falls behind schedule and the topic must be omitted altogether. He does not include ethics material in his examination because he considers the topic too subjective to lend itself to evaluation by examination.

b+ A faculty adviser discovers that one of her new master's degree candidates in counseling is engaged in private practice as a "marriage and family counselor from a Christian point of view." The faculty adviser, believing the student not qualified for the independent practice of counseling, challenges the student on this matter. The student responds that, although he is not an ordained minister and no church is sponsoring his counseling service, he feels that he is a good enough Christian to justify this private practice of counseling. After consulting with the department chair, the faculty adviser offers the student three alternatives: (a) close his private practice, (b) obtain official sponsorship for his counseling service by his local church and make this known publicly, or (c) withdraw from the graduate program. The student chooses to withdraw from the program.

b– A young, entering, female master's candidate is overjoyed when she learns she is to receive a graduate assistantship working with her major adviser

on a research project. To her dismay, however, she finds she has little contact with the professor and is really supervised by two male Ph.D. candidates who are also being advised by the same faculty member. The male Ph.D. candidates make her life miserable by demanding that she work on holidays and regularly work 30-35 hours a week, when the employment agreement was for 15 hours a week. Additionally, they are constantly making sexual advances toward the young woman. Finally, she talks with the major professor. She says she will talk with the two Ph.D. candidates. Because of the embarrassing nature of the situation, however, she never gets around to having the conversations with the result that the young woman drops out of the program.

**H.8. Preparatory programs must encourage students to value the ideals of service to individuals and to society. In this regard, direct financial remuneration or lack thereof must not influence the quality of service rendered. Monetary considerations must not be allowed to overshadow professional and humanitarian needs.**

a+ The counselor education faculty at a university very much want their students to value the service component of the profession. Consequently, the faculty are expected, once every two years, to volunteer a reasonable amount of time at one of the community mental health agencies. Additionally, by the end of their course of study, each student is required to have participated in two volunteer experiences. The student works with his/her major adviser to identify and organize these experience.

a– A visiting faculty member in the student personnel graduate program is responsible for instruction in a summer institute. His preoccupation with taking full advantage of recreation and sight-seeing opportunities leads the students and fellow staff to feel the member is giving very little of himself, but they say nothing to him.

b+ An outstanding young assistant professor has been hired by a small college to begin a master's program in counseling and student personnel. The young man is bright and energetic and is rapidly making a reputation for himself nationally through his research efforts. He is also successful in beginning to build a solid educational program at his college. Halfway through his second year, he is contacted by a prestigious university regarding a position at a salary higher than what he is currently paid. He would need to start the position within the next few weeks, however. After a great deal of soul searching, the young man declines, indicating he does not feel he can ethically leave his students and colleagues on this short of notice. To do so would be modeling unethical behavior to his students.

b– A month after a student has accepted a position as Head of Residences in a small isolated college he receives an offer of a position in a large university that does not entail residing in a residence hall. His faculty adviser is enthusiastic about the increased opportunity for intellectual and

professional growth and urges the student to cancel his first commitment and accept the new offer.

**H.9. Members responsible for educational programs must be skilled as teachers and practitioners.**

a+ Because of the complaints from students regarding the poor teaching abilities of some of the faculty, the departmental faculty determines something needs to be done. They invite a Shakespearean scholar, who is renowned for her excellent teaching, to work with them as a consultant on effective teaching techniques. Additionally, when a faculty position comes open, the three finalists who are brought to campus are asked to present a 50-minute lecture on counseling theory and practice.

a− A member teaches a course in student personnel administration. He is chosen to teach this course because of his experiences for a few years as Dean of Students during the late 60's and early 70's. His lectures consist primarily of "war stories" about student unrest and disruption. No attention is given to current practices regarding ethnic minorities, changing roles of women, ecology of the campus environment, or "out-reach" programs.

b+ A member has just completed the Ph.D. in student personnel work. In discussing job-hunting techniques with the university's placement director, he indicates that he wants a job involving teaching and research but no professional practice since professional practice would inhibit his research and, thus, his professional advancement and prestige. The director inquires rather sharply as to where he will find a "laboratory" to do his research without personally engaging in professional practice. The member ponders over the director's implied message and later accepts a position as Assistant Dean of Students and Assistant Professor in a graduate program training student personnel workers. After being on the job a few months, he finds that he in fact does have easy access to a "laboratory" in which he can conduct research and that the research findings can be "plowed back" into his professional practice and teaching.

b− A senior faculty member in a graduate department of counseling is chosen to teach a course in research design because he has the best mathematical background of any of the faculty. He is the least experienced, however, in research and publication of all the faculty.

c+ A professor of psychology, expert in learning theory, becomes interested in applying his knowledge of learning theory in a psychotherapeutic setting. He audits several professional psychology courses and then arranges with the director of the department's psychological clinic to treat a few cases, for whom behavior modification techniques are appropriate, under the supervision of the director. As a result, the professional psychology students are much more pleased with his learning theory courses.

c – An educational and counseling psychology department hires a professor expert in statistics and measurement theory but with no qualifications in professional psychology. Later, he asks his department chair for a temporary assignment to teach counseling practicum the next semester in order to gain a better appreciation of the interest of the professional psychology students who take his courses. The department chair agrees, reasoning that all department faculty members should be practitioners to some degree even though their primary specialty is as a scientist.

**H.10. Members must present thoroughly varied theoretical positions so that students may make comparisons and have the opportunity to select a position.**

a+ A professor regularly invites other faculty members and practitioners with differing theoretical approaches and experiences in counseling to lecture to her class in counseling methods in an effort to encourage the students to adopt a broad perspective of the field. Examinations cover the content of the presentations by guest lecturers as well as her own presentations.

a – A member teaching a counseling methods course excludes any consideration of behavior modification techniques because of her limited grasp of learning theory. There are qualified colleagues available who could be used as guest lecturers on the topic.

b+ Students in a psychology of occupations course are required to write papers analyzing several divergent theories of career development and then to write a final paper setting forth and defending their own theory of career development.

b – A member excludes from his course considerations of any counseling theory that in his judgment are not amenable to direct experimental verification.

**H.11. Members must develop clear policies within their educational institutions regarding field placement and the roles of the student and the instructor in such placements.**

a+ Because of the negative feedback from students regarding their field placements during practicum, the faculty in the counselor education department decides they need to revise their policies. They make the following decisions: A faculty member is appointed field placement director. The director personally talks with all people in charge of the placement sites to determine the willingness on their part to supervise the students who will be placed there. When the students begin their placements they meet with their supervisors to develop a contract outlining goals and objectives. The student then meets weekly with the on-site supervisor and also with the practicum supervisor.

a – A graduate student in counseling psychology spends a year working full time in a community counseling center. A faculty committee is unable to decide whether his work qualifies for internship credit because most internships are in the campus counseling center, and guidelines have not been drawn up for outside internships.

b + A committee of counselor educators within a doctoral program in counseling psychology develops and publishes a set of guidelines for doctoral students that will help them to apply for an internship placement that will fulfill the requirements of the program and the individual needs and interests of the students.

b – A graduate student receives a student personnel internship assignment that places him in an academic dean's office. Nobody seems to know what the student is supposed to be doing; the dean encourages him to "work up some goals" but provides no structure or suggestions. The student complains of the excessive ambiguity of the job to his adviser, but the adviser does not feel comfortable in approaching the dean about this. The student continues to draw a paycheck, and continues a futile search for a population of students with which to work.

**H.12. Members must ensure that forms of learning focusing on self-understanding or growth are voluntary, or, if required as part of the education program, are made known to prospective students prior to entering the program. When the education program offers a growth experience with an emphasis on self-disclosure or other relatively intimate or personal involvement, the member must have no administrative, supervisory, or evaluating authority regarding the participant.**

a + Graduate students in a counseling and personnel services department are made aware before they enter the program that they need to have developed by the end of the program adequate psychological maturity and good interpersonal skills. Evaluation as to whether they meet this standard will be made primarily on their performance in practicum. They are made aware of growth groups and other resources outside of the department faculty that they may utilize at their discretion and in confidence.

a – Students enrolled in a graduate course in Group Counseling are not informed in advance that the course really is group therapy and that they are expected to discuss their personal problems and hang-ups in the group. If they do not reveal themselves fully, they receive low or failing grades and are subjected to pressure for self-revelation from the instructor.

b + A member of a counseling center staff offers a growth group experience for graduate students in the department of counseling and personnel services. The group facilitator is not a member of the training department

and will give no feedback to the department about any individual in the group or about the group itself.

b– A practicum supervisor requires weekly individual supervisory sessions with each practicum student. Typically, he turns these sessions into quasi-counseling sessions for the psychological growth of the student. The student's grade in the practicum is based in large part on the results of these individual sessions.

**H.13. Members must conduct an educational program in keeping with the current relevant guidelines of the American Personnel and Guidance Association and its Divisions.**

# ANALYSIS OF FREESTANDING INCIDENTS

In the previous part of this casebook incidents are presented that illustrate and exemplify the individual ethical standards or parts thereof. In actual practice, however, we often encounter incidents that involve several ethical standards and/or legal issues. In fact, the typical report of alleged violation of ethical standards that the APGA Ethics Committee receives is of this more complex nature. Below we present three freestanding incidents as they might have been received by the Ethics Committee followed by an analysis of the incident in light of our Ethical Standards and/or applicable laws.

Our Ethical Standards are silent regarding what a member should do in a situation that would require violating either an ethical standard or the law. Perhaps the framers of the Standards were intentionally silent on this issue, leaving the decision to the conscience of the individual member. Nevertheless, such dilemmas can and do occur and Incident C is presented to illustrate how complex such dilemmas can be.

## INCIDENT A

### Facts

Two professors in a graduate program in counseling psychology conduct a private counseling practice in their apartment complex four evenings a week. Their private practice conforms to their university's regulation concerning consultation and private practice of professors. They have a reputation among colleagues and graduate students as excellent, effective counselors. The university offers counseling to all enrolled students through the University Counseling Center at no charge to the student. From time to time counseling psychology graduate students request counseling from these professors through their private practice for the purpose of enhancing their self-awareness and the discovery and remediation of any psychological "blind spots." The professors are meticulous in explaining that counseling is available to all students at the University Counseling Center at no cost to the student. If the counseling psychology graduate student insists, however, the professors will agree to accept him/her as a client in their private clinic for the usual fee provided the student is not one of their advisees. The counseling psychology program faculty is relatively small and the professors can expect that they may have

most counseling psychology students in one or more of their classes and can expect to serve on the doctoral committee of several of them.

### Analysis

Standard F.6 states that it is unethical to use one's institutional affiliation to recruit clients for one's private practice. Clearly, these professors adequately meet this standard.

Standard B.2 states that information resulting from a counseling relationship will be kept confidential, consistent with the obligations of the member as a professional person. Also, standard H.5 states that these professors have an obligation to screen from the training program those individuals who are unable to provide competent services. Thus, it is entirely possible that one of the professors could learn of information in a counseling session that would suggest that the client/graduate student be screened from the training program. In this situation the duties imposed on the professor by standard B.2 are in conflict with those imposed by standard H.5. Therefore, practices that create conflict of interest situations are unethical practices.

Standard B.11 states that when a member has other relationships, particularly of an administrative, supervisory, and/or evaluative nature with an individual seeking counseling, the member must not serve as the counselor. Further, B.11 states that dual relationships with clients that might impair the member's objectivity and professional judgment must be avoided. Obviously, then, for these professors to accept their graduate students as clients in their private practice is a violation of both parts of B.11 cited here. This concept is reiterated in H.12, which states in part that when the education program offers a growth experience with an emphasis on self-disclosure or other relatively intimate or personal involvement, the member (providing such experiences) must have no administrative, supervisory, or evaluative authority regarding the participants.

Standard H.7 states that members make students aware of the ethical responsibilities and standards of the profession. By violating the ethical standards in a manner that their graduate students can be aware of it, these professors are modeling unethical behavior and, thus, violating H.7.

### Conclusion

These two professors have breached the *APGA Ethical Standards*, particularly standards B.2, H.5, B.11, H.12 and H.7 taken in combination.

## INCIDENT B

### Facts

A nonprofit, private agency accredited by IACS and supported by community philanthropy and the United Fund, provides career counseling, job placement, information regarding loans, grants, and scholarship funding, and conducts

groups dealing with job-seeking skills, women in transition, and career change issues. This agency has been in existence since 1942. Because of funding sources, the agency has a lay board and advisory committee whose function includes policy setting, agency direction, and funding priorities.

Recently, the president of this board assumed sole responsibility for initiating a study of the agency's functions. He engaged the aid of another board member, a psychiatrist from within the community. Initially, these two board members demanded that all files and records be made available to them for this study. The professional staff of the agency objected to their intrusion into files stating that, by APGA standard of ethics, counseling records must remain confidential. The staff expressed this as a violation of their clients' interests. The two board members finally suggested that the staff delete all identifying information and repeated their demand for records.

## Analysis by the Agency's Professional Staff

The staff expressed its concurrence in an *objective evaluation* by an outside professional evaluator, but felt that a board member could not meet the requirement of objectivity, was not qualified to assess the work of vocational counselors, and in fact raised a question of conflict of interest.

While these issues and procedures are currently unresolved, we are asking the right to have our professional input regarding the evaluation process, as well as more control over this process aimed at maintaining clients's right to privacy and confidentiality. At the moment, we appear to have lost the battle to participate in the selection of a more appropriate individual to evaluate the work of this agency and the professional staff.

We fervently believe that our clients are entitled to the privacy and confidentiality we promised. Our concern at having a local psychiatrist who happens to be a board member conduct this study suggests the possibility of a conflict of interest as well as an inappropriate role for a lay board member. Obviously, this opens the door to other intrusions into the counselor-client relationships. One might note that when asked what hypothesis this study would answer, the psychiatrist in question replied flatly, he would develop the hypothesis *after* his review of client records. Despite the fact that he is a psychiatrist, there is no evidence that this board member has the proper professional qualifications in career counseling to conduct such a study.

We have combed the APGA code with reference to confidentiality only to find a grey area as to *who has access to records* even if identifying information is deleted.

## Analysis by the Authors

Obviously, this situation is a "sticky wicket." The board of directors of the agency has full authority to establish policy and goals for the agency, evaluate the professional staff as to whether it is adhering to established policy and achieving established goals, and to take corrective action deemed to cause policy to be adhered to and goals to be achieved.

It is not uncommon for an officer of a board to initiate study of some issue of interest to the board without an official directive from the board to do

so. In this instance, however, it appears that the president of the board, on his own, has decided to conduct a full-scale evaluation of the performance of the professional staff, something that has not been routinely done in the past. The manner in which most governing boards function would suggest that such a decision be made formally by the board in plenary session, not unilaterally by the president of the board.

Standard G.2 states that members must establish working agreements with supervisors regarding confidentiality, records, et al., and that those working agreements must be made known to those concerned. Apparently, the professional staff of this agency has not done so or has not been successful in doing so. If the professional staff had established working agreements with the board, this incident probably would not have occurred. But, since the incident has occurred, it would be appropriate for the professional staff to request a hearing with the board for the purpose of establishing working agreements and that the planned performance evaluation be held in abeyance until such working agreements have been adopted after which the performance evaluation could go forward in accordance with the working agreements.

Standard G.5 states that members must submit regularly to professional review and evaluation. Whether the evaluation proposed by the president of the board can be considered a "professional review and evaluation" in the sense of this standard is debatable. In fact, the professional staff contends that the board must be considered a "lay" board and thus incapable of conducting a professional evaluation. The "lay" board, however, is capable of and has the responsibility and authority to determine if the professional staff is adhering to policy and is accomplishing goals set by the board.

Indeed, Standard B.2 does state that records of counseling relationships must be maintained as confidential. Standard B.6 states that counseling records to be used for training and research must first have all personally identifying information removed or disguised. Standard D.10 states the same requirement when furnishing data to another person to use in a research project. Thus, to provide counseling records with all personally identifying information deleted, as agreed to by the two board members, would not violate B.2, B.6, or D.10.

Standard B.5 states that records of the counseling relationship are to be considered professional information for use in counseling and should not be considered a part of the records of the agency. That is, counseling records should be used only for the purpose for which they were generated. The essence of the counseling records are essential, however, if a valid performance evaluation of the professional staff is to be made. It is clearly within the province of the board to cause such an evaluation to be made. Since the two board members have agreed that personally identifying data could be purged from the counseling records before they are released for the performance evaluation, the question remains: Who should make the performance evaluation? It is a well-established convention in our society that governing boards of agencies such as this one are considered to represent the consumers of the agency's wares and need not be professionals skilled in the domain represented by the agency. The old cliche'—*a lawyer who represents himself has a fool for a client*—may well be applicable in this incident. The fact that one board member is

a psychiatrist and therefore may have some of the competencies necessary to perform a performance evaluation of the professional staff should not lead him to do so. He probably does not have the competence to evaluate career counseling work, but he may well have the competence to determine if the professional staff is straying beyond its charge, say, into mental health counseling. The performance evaluation should be done by a panel of experts retained by the board but independent of the board. The several competencies possessed by individual board members can be used to evaluate the report of the panel of experts retained to do the performance evaluation.

### Conclusion

The professional staff appears to have failed to satisfactorily comply with Standard G.2, which has to do with establishing working agreements with superiors. Perhaps they tried, unsuccessfully. The greater errors seem to have been made by the two members of the board. If this incident were to come to the APGA Ethics Committee as a formal complaint, the committee would probably try to resolve the complaint through negotiation. There is no clear evidence that the professional staff have violated our ethical standards, but they have been unsuccessful in implementing them. This does not warrant so severe a sanction as dismissal from membership in APGA. They need help, not sanction.

## INCIDENT C

### Facts

The Pierpont Community School system twice a year administers a general standardized achievement test battery to all students in the system in grades K through 12. The tests are scored and analyzed by a commercial scoring service with test reports being returned to the school. An individual report for each student's file, a narrative report for sending to the parents, as well as reports by building and system are provided. The scoring service does not return the answer documents that the student has filled out unless the school requests it to do so. This school system routinely requests that the answer documents be returned so that they can be hand scored if a particular score looks questionable or is challenged by a parent. The individual report on each student is filed in that student's cumulative folder, and the narrative reports for parents are mailed to the parents. The answer documents are simply placed in bulk storage for a year, but an individual student's answer document can be retrieved. Students in grades K through 4 place their answers on the test booklet itself, while students in the other grades place their answers on a separate answer sheet. Of course, the school has file copies of all the tests used and the accompanying manuals.

The test battery is copyrighted by a commercial publisher, and the following statement appears on the test booklet: "No part of this publication may be

reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system without permission in writing from the publsher."

The copyright laws of the United States were revised a few years ago and appear in Title 17 of the United States Code. Section 106(1) of that title grants exclusive rights to the owner of a copyright to reproduce copies of the copyrighted material. The law, however, makes certain exceptions to this exclusive right of the copyright owner to make copies. One such exception is called the doctrine of *fair use*. Under this doctrine a person other than the copyright owner may make a limited number of copies of a copyrighted work without the permission of the copyright owner. Section 107 of the above title sets the standards of *fair use*. This section provides that the fair use of a copyrighted work for purposes such as criticism, comment, news reporting, teaching, scholarship, or research is not an infringement of copyright. It further states what factors are to be considered in determining *fair use* (see below).

The Family Educational Rights and Privacy Act (FERPA) (Appendix A) provides that parents of students have a right to inspect, review, and challenge the content of their children's educational records that are maintained by or for the school. The Education of the Handicapped Act (EHA) contains substantially the same provision. Under FERPA and FHA the school has the authority to determine what material will be placed in the educational record and may add or delete material from time to time except when a request to inspect the record is pending. Section 99.12 of FERPA and 121.a562(b)(2) of EHA provide that parents may obtain copies of the educational record where failure of the school to provide such copies would effectively prevent the parents from exercising their right to inspect the record. This primarily applies to instances where parents are unable to physically come to the school to inspect the record because of such conditions as prolonged illness and extended travel.

The Pierpont school superintendent has assigned the sole responsibility to counselors to respond to requests from parents to review their children's educational records. The counselors (both elementary and secondary) have worked together to develop procedures to respond to such requests as having a counselor on duty one evening a week so that working parents may inspect the records of their children without being absent from work. Parents have shown considerable interest in monitoring the educational progress of their children and frequently request to inspect the educational record. In a few instances, parents have been so stunned by the poor performance of their child on the achievement test battery that they have demanded to see the tests and the answers their child gave to the test questions. In accordance with the plan developed by the total counseling staff, at a parent's request, the counselor will agree to hand score the test to determine if there are errors in the test report. For some parents this is unacceptable; they repeat their demand to not only see the tests and answer sheet but also to have a copy of both to take home and study them intensively. The counselor explains that the tests and answer sheets are not a part of the educational record and, therefore, they have no right to inspect them under provisions of FERPA

and/or EHA. The counselor further explains that to copy the test would violate the copyright law and to give them a copy of the test would violate the security of the test and render it useless for future use as well as increasing the cost of the testing program to a prohibitive level. The parents brush such contentions aside as mere technicalities and threaten to sue, claiming that FERPA and EHA gives them not only the right to inspect their child's *total* educational record but also to have a copy of it to study at their leisure.

## Analysis

Here the counselors are faced with the problem of balancing the demands of the *APGA Ethical Standards*, the federal laws regarding parental access to the educational records of their children, and the copyright law. What is an educational record within the meaning and intent of FERPA and EHA? Clearly, the cumulative folder for each student is an educational record and parents have a clear right to inspect this record. Equally clearly the school has the authority to determine the content of this record including the authority to add or delete material from this record from time to time. Also, a school may maintain more than one educational record on a given student, each of which parents have a right to inspect upon request. Therefore, the parent has a right to inspect the test report filed in the cumulative folder. But, what about the student's answer sheet in the storage room? Since the answer sheet contains educational information and is individually identifiable by student name, it would be considered another educational record (in addition to the cumulative folder). Records made by school personnel and maintained in the *sole possession* of the maker thereof are excluded from the definition of the educational record. To qualify under the *sole possession* exclusion, the record must (a) be a private note created solely by the individual possessing it, (b) be a personal memory aid, and (c) must not be accessible or revealed to any other person (including the student), except the possessor's temporary substitute. Thus, the answer sheet does not qualify under the *sole possession* provision.

Students in grades 5 through 12 place their answers to the test battery on a separate answer sheet and the reusable test booklet never becomes personally identified with the students. Therefore, the test booklet is not a part of the educational record of students in grades 5 through 12, and, thus, need not be made available to parents for inspection. It's a different story for students in grades K through 4. They placed their answers on the test booklet itself. Thus, there is a single document, containing questions and answers, which is personally identified with the student, and, because of this, must be considered an educational record available to parental inspection. (The above interpretation is based in part on advice provided by the U.S. Department of Health, Education, and Welfare Office of General Counsel in response to queries from several school districts.)

Now, let's take up the question of providing parents of children in grades K through 4 with a copy of the copyrighted combination test booklet and answer sheet. If the parent comes to school and inspects the educational record, the school is not required to give the parent a copy of the test booklet. If

the parent, however, for valid reasons, is unable to come to school and inspect educational records, the school is obligated, under provisions of FERPA and EHA, to provide the parent with a copy of the educational record including the combination test booklet/answer sheet for students in grade K through 4.

Does the requirement of FERPA and EHA to provide parents with copies of the child's educational record when they are unable to come to school to inspect the educational record conflict with the copyright law when the record contains a copyrighted work? One course of action would be to request permission of the publisher to do so, and, if granted, there would be no legal problem. It is highly unlikely, however, that a test publisher would give such permission for test security reasons. Is such a practice permitted under the *fair use* provision in the copyright law? The law indicates that several factors should be considered in determining *fair use* in a particular instance. First is the purpose and character of the use. The use in this instance is noncommercial, nonprofit, and educational, and, by this standard, would qualify as *fair use*. The second factor to be considered is the nature of the copyrighted work. There appears to be nothing in the nature of an achievement test that, on its face, would disqualify it for *fair use*. The third factor is the amount and substantiality of the portion used in relation to the copyrighted work as a whole. In this instance the whole test would be copied. It could be argued that copying the whole test would disqualify it for *fair use;* however, it is permissible to copy whole journal articles for study and research. Therefore, it would be safer to assume that copying the whole test could qualify for *fair use*.

The fourth factor to be considered is the effect of the use upon the potential market for or value of the copyrighted work. HEW has advised schools that, in its opinion, the potential market for the test would not be diminished when one copy is given to parents of a student even when matters of test security are considered. HEW based its opinion in part on the U.S. Supreme Court's ruling in the case of *Detroit Edison* v. *NLRB*. In that case a labor union requested copies of tests used in employment and promotion. Detroit Edison refused the request claiming that to breach the security of the tests in this way would destroy their value in any future employment and/or promotion decision. The American Psychological Association filed an *amicus curiae* brief in support of Detroit Edison's position. The court ruled in favor of Detroit Edison. HEW, however, believes that interest guaranteed parents by FERPA and NEHA would outweigh the interest of test security in instances like the one we are considering here. This seems a rather odd conclusion to reach when other HEW regulations (those associated with Title I of ESEA) require that students be retested with the identical form of a test when the purpose of the testing is to determine the amount of educational progress made in a given period of time. If parents are given copies of the test when the parents know that that identical test will be used again eight months later, the temptation for parents to engage in intensive coaching would be too great and test security would be breached. It is our opinion that the value of the copyrighted work would be seriously diminished by giving copies of it to parents and, therefore, this practice would not qualify for *fair use* under the copyright law. In the absence of a court ruling directly testing this issue, however, HEW's opinion no doubt will carry heavier weight than ours.

Let's now look at this incident in light of our ethical standards. Standard C.6 states that "Any prior coaching or dissemination of test material can invalidate test results. Therefore, test security is one of the professional obligations of members." Thus, giving copies of tests to parents is a clear violation of Standard C.6. Standard C.11 is also applicable. It states in part that the member must guard against reproductions of published tests without permission of the publisher. D.11 states that members will observe all copyright laws.

## Conclusion

FERPA and EHA require that schools provide an opportunity for parents to inspect, review, and challenge their children's educational records. Test results, test answer sheets, and test booklets that are personally identified with students are educational records even if maintained separate from other educational records. We are uncertain at this time whether copying tests for distribution to parents violates the *fair use* provision of the copyright law. Schools must provide copies of a student's educational record if the parents are unable to inspect the record on the school premises.

So, how can Pierpont Community School extricate itself from this dilemma? We recommend that it cease its practice of keeping the answer sheets, even in "bulk storage." Either have the test scoring services destroy the answer sheets after the test reports are prepared or destroy the answer sheets as soon as questionable scores have been rechecked by hand. In doing so, neither answer sheets or test booklets would ever be part of the educational record once the answer sheets are destroyed. FERPA in no way prohibits the school from adopting the practice of destroying answer sheets once the test reports are prepared. The provisions of EHA are not so clear on this issue. It is possible that EHA might be interpreted to require that parents be given copies of both answer sheets and test booklets in connection with a due process hearing regarding the individualized educational program of a handicapped child.

Currently, "truth-in-testing" laws are being proposed in several state legislatures. If these proposed laws are passed, the above solution to Pierpont Community School's dilemma might not be permitted. Since most of these proposed laws are in clear and substantial conflict with APGA's ethical standards, members should work to have such proposed laws defeated.

*NOTE: Information regarding HEW's advice to schools on this issue was taken from copies of letters provided APGA by HEW personnel.*

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## APPENDIX

# DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

## Office of the Secretary

■

# PRIVACY RIGHTS OF PARENTS AND STUDENTS

### Final Rule on Education Records

# FINAL REGULATIONS FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (The Buckley Amendment)

On June 17, 1976 The Department of Health, Education and Welfare issued the final rules to implement the Family Educational Rights and Privacy Act of 1974 (The Buckley Amendment). The Act became effective on November 19, 1974 with a clarifying Senate Resolution approved by Congress on December 19, 1974.

The proposed rules to implement the Act were published in the **Federal Register** on January 6, 1975, and there was a 60-day period provided for public comment. Three hundred and twenty-one comments were received and the first segment of the final rules appeared in the **Federal Register** on March 2, 1976.

The original statute (PL 93 380), the proposed rules and the first series of final rules were all reported in this publication.

The final rules reported herein (and appearing in the **Federal Register**, Vol. 41, No. 118, Thursday, June 17, 1976, pp. 24670-24675 supersede the previously published regulations.

The first segment of the final regulations have been repeated in the complete regulations which follow, providing a single document to implement the Family Educational Rights and Privacy Act.

A section outlining public comments and the responses by H.E.W. preceded the final regulations. These comments and responses appear at page 24662 **Federal Register**, Vol. 41, No. 118, Thursday, June 17, 1976 for those interested in the entire contents; however, the Editors have summarized these comments and responses in a question and answer format for the convenience of our subscribers.

Administrators will note with satisfaction that the final regulations are more flexible. While preserving the rights of parents and eligible students, the final regulations have been drafted with more sensitivity for the day-to-day operations of colleges and school—including more relaxed record-keeping requirements.

While these regulations are effective June 17, 1976, the Secretary has provided for a 90 day period for comments concerning how the regulations affect the daily activities of educational institutions. This comment period will commence July 1, 1977 or approximately one year after the effective date of these rules. Administrators would be well advised to keep accurate records during the 1976-77 school year in order to make documented comments during the summer of 1977.

The Family Educational Rights and Privacy Act Office has been established to investigate, process and review complaints. This Office can also answer questions of administrators. The address and telephone is as follows:

Family Educational Rights and Privacy Act Office
Department of Health, Education and Welfare
330 Independence Avenue, S.W.
Washington, D.C. 20201
Telephone: 202 245-7488

## QUESTIONS and ANSWERS

**Q. To whom does the Act apply?**

A. The Act and the regulations to implement it apply to any agency or institution which either receives funds directly from the Office of Education, or which has students in attendance who receive funds from the Office of Education — College Work Study program, Supplemental Opportunity Grants program, National Direct Student Loan program, Guaranteed Student Loan program, or Basic Educational Opportunity Grant program funds.

### DEFINITIONS

**Q. Does the term "Directory Information" include only the information enumerated?**

A. No. Directory Information includes the enumerated information, but the term "other similar information" has been added to the definition.

**Q. The terms "substitute" and "financial aid" were not defined earlier. How can one interpret these terms?**

A. The final regulations contain specific definitions of these terms at section 99.3.

### AUTHORITY TO EXERCISE PARENT'S RIGHTS

**Q. Who can exercise the rights of a parent if the student's parents are divorced or if a guardian or foster parents act on behalf of the student?**

A. An institution may presume that either parent has the authority to exercise the rights contained in the act unless the school/college has been provided with evidence that a State law, a court decree, or a legally binding instrument provides to the contrary.

### FORMER OR POTENTIAL STUDENTS

**Q. Do the regulations include former students?**

A. The regulations state that a student ". . . includes any individual with respect to whom an educational agency or institution maintains educational records."

**Q. Must an institution, then, inform former students or their parents of their rights and the institutional policy under the annual notification requirement?**

A. No.

### INFORMATION SENT TO PARENTS

**Q. May information contained in the educational records of students who are eighteen or enrolled in post-secondary institutions be sent to parents without the written consent of the student?**

A. Yes, but only if the eligible student is a financial dependent of his or her parents as defined under section 152 of the Internal Revenue Code of 1954 (See section 99.31(a).(8)).

### FINANCIALLY DEPENDENT STUDENTS

**Q. How do you know if an eligible student is a financial dependent?**

A. There is no particular procedure prescribed by the regulations. An institution which chooses to inform parents of eligible students of information in the students' records may ask students if they are dependents at the time of registration, other institutions may want to obtain affidavits from the parents.

**Q. Must information be sent to parents if the eligible student is a dependent?**

A. No. This will depend upon the institution's policy.

**Q. If an eligible student is a financial dependent, are any of their other rights under the Act affected?**

A. No.

### THE ANNUAL NOTICE AND INSTITUTIONAL POLICY

**Q. The annual notice to be provided to parents or eligible students would have been a lengthy document under the proposed rules. Has that requirement changed at all?**

A. Yes. Institutions are still required to provide an annual notice, but it need only include the rights accorded under the Act, the institutional policy, **and the right to file a complaint with H.E.W.**

**Q. What kind of information does the institutional policy need to cover?**

A. The institutional policy must include quite a bit of information which is all outlined in section 99.5.

**Q. Won't that list make the annual notice lengthy?**

A. No. The institutional policy must only be made available upon request; however, you must tell parents or eligible students in the annual notice where they may obtain written copies of your policy and, of course, the fact that a policy exists.

**Q. Must the policy still list every educational record maintained and the name of the individual who is responsible for the record?**

This special report is issued as a supplement to the July, 1976 issue of The School Student and The Courts and the August, 1976 issue of The College Student and The Courts, published by College Administration Publications, Inc., P.O. Box 8492, Asheville, NC 28804. Telephone: 704 252-0883.

A. No. You are only required to list "types" of records kept and the "title" of the individual responsible for the record. The previous requirement to specify the name of the individual has been deleted from the final regulations.

**Q. Must the notice still be in the primary language of the parent or eligible student?**

A. Only institutions of elementary and secondary education are required to provide for the need to effectively notify parents of students identified as having a primary or home language other than English. This requirement no longer applies to post-secondary institutions.

**Q. How should the annual notice be made?**

A. The Department did not want to specify the method since institutions differ. The final regulations simply say ". . . by such means as are reasonably likely to inform parents or eligible students. . . ." The notice may be published in the student handbook, student newspaper, catalogue, posted on a bulletin board for students and/or put in letters or bulletins to parents.

**Q. Must the notice be provided every year?**

A. Yes.

## ACCESS TO EDUCATIONAL RECORDS

**Q. Must we still inform parents or eligible students as to which institutional officials have access to their educational records?**

A. The requirement of the proposed rules regarding a listing of persons who have access has been deleted. The final regulations require only that an institution include a specification of criteria that the institution will use for determining which parties are "school officials" and what is considered to be a "legitimate educational interest."

**Q. Could other students serving on a discipline hearing board have access to previous discipline records under the Act without prior written consent?**

A. Yes, if they come within the criteria used in the policy for "school officials" and have "legitimate educational interests" in viewing the records.

**Q. May an institutional representative be present when a parent or eligible student reviews their records?**

A. Yes, if the institution decides it wants to do so.

**Do parents or eligible students have the right to make copies of their records?**

A. Yes, but the institutions may charge a reasonable fee for copies. The institutional policy, however, must include a schedule of copy fees.

**Q. May applicants for admission inspect their records?**

A. No. The term "student" does not include a person who has not been in attendance at such agency or institution.

## WAIVER

**Q. If an eligible student waives his or her right to inspect confidential recommendations relating to admission, job placement, or consideration for an award, how long would the waiver be in effect? Could the student at a later time revoke his or her waiver?**

A. The waiver will continue in effect as long as the letters or statements of recommendation are maintained. If a student later revokes a previous waiver respecting a specific class of recommendations, such as recommendations respecting employment, the student would be able to inspect **only** those statements or recommendations placed in the record **after** the waiver has been revoked.

## HEARING TO CORRECT EDUCATIONAL RECORDS

**Q. May a hearing to correct educational records be requested before an informal proceeding to reconcile records?**

A. Yes, if the parent or eligible student have reason to believe an educational agency or institution is utilizing informal attempts to reconcile differences as a delaying tactic.

**Q. May a parent or eligible student request a hearing to contest a grade?**

A. No; however, they may request a hearing to contest whether or not the grade assigned by the teacher/professor has been correctly recorded.

**Q. Must the hearing be held at a time convenient for the parent or eligible student?**

A. The regulations require that the notice of the hearing include the date, time and place reasonably in advance of the hearing and the institution make a reasonable effort to schedule the hearing at a time and place convenient for the parent or eligible student.

**Q. Can the parent or eligible student be represented at the hearing by an attorney?**

A. The parent or eligible student can be represented by an individual of their choice including an attorney. Representation is at the expense of the parent or eligible student.

**Q. How soon must the hearing be held after it is requested?**

A. The regulations only state that the hearing be held within a reasonable time after requested.

**Q. Must someone outside the institution conduct the hearing?**

A. No. An institution may, if it desires, obtain someone outside the institution to conduct the hearing, but the regulations only require the hearing officer to be an individual who does not have a direct interest in the outcome.

**Q. What must the decision of the hearing officer include?**

A. The decision shall be based solely upon the evidence presented at the hearing and must include a summary of the evidence and the reasons for the decision.

**Q. Must the institution conduct the hearing in the language of the parent or eligible student?**

A. No. Institutions are encouraged to conduct the hearing in the primary language of the parent or eligible student but are not required to do so. Parents or eligible students have the right to be assisted by an interpreter at the hearing just as they have the right to be represented by an attorney.

## SUBPOENAS

**Q. Are institutions still required to inform parents or eligible students before complying with a lawful subpoena?**

A. The final regulations have been changed and now require a "reasonable" effort to notify the parents or eligible student in advance of compliance.

## DISCLOSURE OF INFORMATION

**Q. Is an institution required to disclose information from the educational record in those cases where the parent or eligible student's consent is not necessary?**

A. No. New section 99.31(b) states that "This section shall not be construed to require or preclude disclosure . . ."

## MAINTENANCE OF RECORDS

**Q. Must records still be maintained listing everyone who requests information or to whom information on a student is disclosed?**

A. Yes. However, records need not be maintained on the disclosure of directory information or disclosure to the parent or eligible student themselves.

**Q. How long should such records be kept?**

A. As long as the educational records of the student to whom they relate are kept.

**Q. May educational records be destroyed?**

A. Yes, unless there is an outstanding request to inspect or review such records. Of course, applicable state law may determine how long records must be retained.

## ASSURANCE OF COMPLIANCE NO LONGER REQUIRED

**Q. Must an assurance be provided to H.E.W. by the institution stating that the school or college is in compliance with the statute?**

A. No. This requirement has been deleted from the final regulations.

These questions and answers have been prepared to simplify and to help clarify H.E.W.'s responses to comments from the educational community as published in **The Federal Register**. They represent the primary information presented.

It is suggested that before institutional policies are formulated, the responsible administrator read the entire list of comments and responses in the remarks section preceding the final regulations in **The Federal Register**, (pages 24662 thru 24670).

Upon request we will be pleased to mail without charge, to our subscribers, copies of those pages, punched for insertion in your binder.

**Address your request to:**
College Administration Publications, Inc.
P.O. Box 8492, Asheville, NC 28804

Secondary or Elementary Schools:
School Administration Publications
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## SubpartA—General


Sec.
99.1 Applicability of part.
99.2 Purpose.
99.3 Definitions.
99.4 Student rights.
99.5 Formulation of institutional policy and procedures.
99.6 Annual notification of rights.
99.7 Limitation of waivers.
99.8 Fees.


## Subpart B—Inspection and Review of Education Records


99.11 Right to inspect and review education records.
99.12 Limitations on right to inspect and review education records at the postsecondary level.
99.13 Limitation on destruction of education records.


## Subpart C—Amendment of Education Records


99.20 Request to amend education records.
99.21 Right to a hearing.
99.22 Conduct of the hearing.


## Subpart D—Disclosure of Personally Identifiable Information From Education Records


99.30 Prior consent for disclosure required.
99.31 Prior consent for disclosure not required.
99.32 Record of disclosures required to be maintained.
99.33 Limitations on redisclosure.
99.34 Conditions for disclosure to officials of other schools or school systems.
99.35 Disclosure to certain Federal and State officials.
99.36 Conditions for disclosure in health or safety emergencies.
99.37 Conditions for disclosure of directory information.


## Subpart E—Enforcement


99.60 Office and review board.
99.61 Conflict with State or local law.
99.62 Reports and records.
99.63 Complaint procedure.
99.64 Termination of funding.
99.65 Hearing procedures.
99.66 Hearing before Panel or a Hearing Officer.
99.67 Initial decision; final decision.


AUTHORITY: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g) unless otherwise noted.

## Subpart A—General

### §99.1 Applicability of part.

(a) This part applies to all educational agencies or institutions to which funds are made available under any Federal [program for which the U.S. Commissioner of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.]

(20 U.S.C. 1230, 1232g)

(b) This part does not apply to an educational agency or institution solely because students attending that non-monetary agency or institution receive benefits under one or more of the Federal programs referenced in paragraph (a) of this section, if no funds under those programs are made available to the agency or institution itself.

(c) For the purposes of this part, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in paragraph (a) of this section: (1) Are provided to the agency or institution by grant, contract, subgrant, or subcontract, or (2) are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Basic Educational Opportunity Grants Program and the Guaranteed Student Loan Program (Titles IV-A-1 and IV-B, respectively, of the Higher Education Act of 1965, as amended).

(20 U.S.C. 1232g)

(d) Except as otherwise specifically provided, this part applies to education records of students who are or have been in attendance at the educational agency or institution which maintains the records.

(20 U.S.C. 1232g)

### §99.2 Purpose.

The purpose of this part is to set forth requirements governing the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(20 U.S.C. 1232g)

### §99.3 Definitions.

As used in this Part:

"Act" means the General Education Provisions Act, Title IV of Pub. L. 90-247, as amended.

"Attendance" at an agency or institution includes, but is not limited to: (a) attendance in person and by correspondence, and (b) the period during which a person is working under a work-study program.

"Commissioner" means the U.S. Commissioner of Education.

(20 U.S.C. 1232g)

"Directory information" includes the following information relating to a student: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, and other similar information.

(20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

(20 U.S.C. 1232g(b)(1))

"Educational institution" or "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any Federal program referenced in §99.1(a). The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

(20 U.S.C. 1232g(a)(3))

"Education records" (a) means those records which: (1) Are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

(i) Are in the sole possession of the maker thereof, and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in paragraph (a) of this definition;

(ii) Maintained solely for law enforcement purposes, and

(iii) Not disclosed to individuals other than law enforce-

ment officials of the same jurisdiction. *Provided*, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3)(i) Records relating to an individual who is employed by an educational agency or institution which:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee, and

(C) Are not available for use for any other purpose.

(ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.

(4) Records relating to an eligible student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;

(ii) Created, maintained, or used only in connection with the provision of treatment to the student, and

(iii) Not disclosed to anyone other than individuals providing the treatment: *Provided*, That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

(5) Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

(20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has attained eighteen years of age, or is attending an institution of postsecondary education.

(20 U.S.C. 1232g(d))

"Financial Aid", as used in §99.31(a)(4), means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.

(20 U.S.C. 1232g(b)(1)(D))

"Institution of postsecondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under State law.

(20 U.S.C. 1232g(d))

"Panel" means the body which will adjudicate cases under procedures set forth in §§99.65-99.67.

"Parent" includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the agency or institution has been provided with evidence that there is a State law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

"Party" means an individual, agency, institution or organization.

(20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make the students's identity easily traceable, or (e) other information which would make the student's identity easily traceable.

(20 U.S.C. 1232g)

"Record" means any information or data recorded in any medium, including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

(20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Health, Education, and Welfare.

(20 U.S.C. 1232g)

"Student" (a) includes any individual with respect to whom an educational agency or institution maintains education records.

(b) The term does not include an individual who has not been in attendance at an educational agency or institution. A person who has applied for admission to, but has never been in attendance at a component unit of an institution of postsecondary education (such as the various colleges or schools which comprise a university), even if that individual is or has been in attendance at another component unit of that institution of postsecondary education, is not considered to be a student with respect to the component to which an application for admission has been made.

(20 U.S.C. 1232g(a)(5))

### §99.4 Student rights.

(a) For the purposes of this part, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student.

(b) The status of an eligible student as a dependent of his or her parents for the purposes of §99.31(a)(8) does not otherwise affect the rights accorded to and the consent required of the eligible student by paragraph (a) of this section.

(20 U.S.C. 1232g(d))

(c) Section 438 of the Act and the regulations in this part shall not be construed to preclude educational agencies or institutions from according to students rights in addition to those accorded to parents of students.

### §99.5 Formulation of institutional policy and procedures.

(a) Each educational agency or institution shall, consistent with the minimum requirements of section 438 of the Act and this part, formulate and adopt a policy of—

(1) Informing parents of students or eligible students of their rights under §99.6;

(2) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with §99.11, including at least:

(i) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

(ii) With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

(iii) A schedule of fees for copies, and

(iv) A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records;

(3) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by §§99.31 and 99.37; the policy shall include, at least: (i) A statement of whether the educational agency or institution will disclose personally identifiable information from the education records of a student under §99.31(a)(1) and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest", and (ii) a specification of the personally identifiable information to be designated as directory information under §99.37;

(4) Maintaining the record of disclosures of personally identifiable information from the education records of a student required to be maintained by §99.32, and permitting a parent or an eligible student to inspect that record;

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under Subpart C, and permitting the parent of a student or an eligible student to place a statement in the education records of the student as provided in §99.21(c);

(b) The policy required to be adopted by paragraph (a) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

(20 U.S.C. 1232g(e) and (f))

### §99.6 Annual notification of rights.

(a) Each educational agency or institution shall give par-

ents of students in attendance or eligible students in attendance at the agency or institution annual notice by such means as are reasonably likely to inform them of the following:

(1) Their rights under section 438 of the Act, the regulations in this part, and the policy adopted under §99.5; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and

(2) The right to file complaints under §99.63 concerning alleged failures by the educational agency or institution to comply with the requirements of section 438 of the Act and this part.

(b) Agencies and institutions of elementary and secondary education shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

(20 U.S.C. 1232g(e))

### §99.7 Limitations on waivers.

(a) Subject to the limitations in this section and §99.12, a parent of a student or a student may waive any of his or her rights under section 438 of the Act or this part. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

(b) An educational agency or institution may not require that a parent of a student or student waive his or her rights under section 438 of the Act or this part. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

(c) An individual who is an applicant for admission to an institution of postsecondary education or is a student in attendance at an institution of postsecondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation described in §99.12(a)(3) except that the waiver may apply to confidential letters and statements only if: (1) The applicant or student is, upon request, notified of the names of all individuals providing the letters or statements; (2) the letters or statements are used only for the purpose for which they were originally intended, and (3) such waiver is not required by the agency or institution as a condition of admission to or receipt of any other service or benefit from the agency or institution.

(d) All waivers under paragraph (c) of this section must be executed by the individual, regardless of age, rather than by the parent of the individual.

(e) A waiver under this section may be made with respect to specified classes of: (1) Education records, and (2) persons or institutions.

(f)(1) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

(2) A revocation under this paragraph must be in writing.

(3) If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

(20 U.S.C. 1232g(a)(1)(B) and (C))

### §99.8 Fees.

(a) An educational agency or institution may charge a fee for copies of education records which are made for the parents of students, students, and eligible students under section 438 of the Act and this part; *Provided*, That the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(20 U.S.C. 1232g(a)(1))

## Subpart B—Inspection and Review of Education Records

### §99.11 Right to inspect and review education records.

(a) Each educational agency or institution, except as may be provided by §99.12, shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education records of the student. The agency or institution shall comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under paragraph (a) of this section includes:

(1) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

(2) The right to obtain copies of the records from the educational agency or institution where failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

(c) An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

### §99.12 Limitations on right to inspect and review education records at the postsecondary level.

(a) An institution of postsecondary education is not required by section 438 of the Act or this part to permit a student to inspect and review the following records:

(1) Financial records and statements of their parents or any information contained therein;

(2) Confidential letters and confidential statements of recommendation which were placed in the education records of a student prior to January 1, 1975; *Provided*, That:

(i) The letters and statements were solicited with a written assurance of confidentiality, or sent and retained with a documented understanding of confidentiality, and

(ii) The letters and statements are used only for the purposes for which they were specifically intended;

(3) Confidential letters of recommendation and confidential statements of recommendation which were placed in the education records of the student after January 1, 1975,

(i) Respecting admission to an educational institution;

(ii) Respecting an application for employment, or

(iii) Respecting the receipt of an honor or honorary recognition; *Provided*, That the student has waived his or her right to inspect and review those letters and statements of recommendation under §99.7(c).

(20 U.S.C. 1232g(a)(1)(B))

(b) If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student.

(20 U.S.C. 1232g(a)(1)(A))

### §99.13 Limitation on destruction of education records.

An educational agency or institution is not precluded by section 438 of the Act or this part from destroying education records, subject to the following exceptions:

(a) The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under §99.11;

(b) Explanations placed in the education record under §99.21 shall be maintained as provided in §99.21(d), and

(c) The record of access required under §99.32 shall be maintained for as long as the education record to which it pertains is maintained.

(20 U.S.C. 1232g(f))

## Subpart C—Amendment of Education Records

### §99.20 Request to amend education records.

(a) The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amend them.

(b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request it shall so inform the parent of

the student or the eligible student of the refusal, and advise the parent or the eligible student of the right to a hearing under §99.21.

(20 U.S.C. 1232g(a)(2))

### §99.21 Right to a hearing.

(a) An educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with §99.22.

(b) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.

(c) If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

(d) Any explanation placed in the education records of the student under paragraph (c) of this section shall:

(1) Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

(2) If the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party, the explanation shall also be disclosed to that party.

(20 U.S.C. 1232g(a)(2))

### §99.22 Conduct of the hearing.

The hearing required to be held by §99.21(a) shall be conducted according to procedures which shall include at least the following elements:

(a) The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing;

(b) The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

(c) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under §99.21, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(d) The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

(e) The decision of the agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

(20 U.S.C. 1232g(a)(2))

## Subpart D—Disclosure of Personally Identifiable Information From Education Records

### §99.30 Prior consent for disclosure required.

(a)(1) An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in §99.31.

(2) Consent is not required under this section where the disclosure is to (i) the parent of a student who is not an eligible student, or (ii) the student himself or herself.

(b) Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(c) The written consent required by paragraph (a) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

(1) A specification of the records to be disclosed,

(2) The purpose or purposes of the disclosure, and

(3) The party or class of parties to whom the disclosure may be made.

(d) When a disclosure is made pursuant to paragraph (a) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

(20 U.S.C. 1232g(b)(1) and (b)(2)(A))

### §99.31 Prior consent for disclosure not required.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is—

(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests;

(2) To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in §99.34;

(3) Subject to the conditions set forth in §99.35, to authorized representatives of:

(i) The Comptroller General of the United States,

(ii) The Secretary,

(iii) The Commissioner, the Director of the National Institute of Education, or the Assistant Secretary for Education, or

(iv) State educational authorities;

(4) In connection with financial aid for which a student has applied or which a student has received; *Provided*, That personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

(i) To determine the eligibility of the student for financial aid,

(ii) To determine the amount of the financial aid,

(iii) To determine the conditions which will be imposed regarding the financial aid, or

(iv) To enforce the terms or conditions of the financial aid;

(5) To State and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974. This subparagraph applies only to statutes which require that specific information be disclosed to State or local officials and does not apply to statutes which permit but do not require disclosure. Nothing in this paragraph shall prevent a State from further limiting the number or type of State or local officials to whom disclosures are made under this subparagraph;

(6) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; *Provided*, That the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to, Federal, State and local agencies, and independent organizations;

(7) To accrediting organizations in order to carry out their accrediting functions;

(8) To parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;

(9) To comply with a judicial order or lawfully issued subpoena; *Provided*, That the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith; and

(10) To appropriate parties in a health or safety emergency subject to the conditions set forth in §99.36.

(b) This section shall not be construed to require or pre-

clude disclosure of any personally identifiable information from the education records of a student by an educational agency or institution to the parties set forth in paragraph (a) of this section.

(20 U.S.C. 1232g(b)(1))

### §99.32 Record of disclosures required to be maintained.

(a) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(1) The parties who have requested or obtained personally identifiable information from the education records of the student, and

(2) The legitimate interests these parties had in requesting or obtaining the information.

(b) Paragraph (a) of this section does not apply to disclosure to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student when the consent is specific with respect to the party or parties to whom the disclosure is to be made, disclosures to school officials under §99.31(a)(1), or to disclosures of directory information under §99.37.

(c) The record of disclosures may be inspected:

(1) By the parent of the student or the eligible student,

(2) By the school official and his or her assistants who are responsible for the custody of the records, and

(3) For the purpose of auditing the recordkeeping procedures of the educational agency or institution by the parties authorized in, and under the conditions set forth in §99.31(a)(1) and (3).

(20 U.S.C. 1232g(b)(4)(A))

### §99.33 Limitation on redisclosure.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not preclude an agency or institution from disclosing personally identifiable information under §99.31 with the understanding that the information will be redisclosed to other parties under that section: *Provided*, That the recordkeeping requirements of §99.32 are met with respect to each of those parties.

(c) An educational agency or institution shall, except for the disclosure of directory information under §99.37, inform the party to whom a disclosure is made of the requirement set forth in paragraph (a) of this section.

(20 U.S.C. 1232g(b)(4)(B))

### 99.34 Conditions for disclosure to officials of other schools and school systems.

(a) An educational agency or institution transferring the education records of a student pursuant to §99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except:

(i) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

(ii) When the agency or institution includes a notice in its policies and procedures formulated under §99.5 that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer;

(2) Provide the parent of the student or the eligible student, upon request, with a copy of the education records which have been transferred; and

(3) Provide the parent of the student or the eligible student, upon request, with an opportunity for a hearing under Subpart C of this part.

(b) If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student: *Provided*, That the disclosure meets the requirements of paragraph (a) of this section.

(20 U.S.C. 1232g(b)(1)(B))

### §99.35 Disclosure to certain Federal and State officials for Federal program purposes.

(a) Nothing in section 438 of the Act or this part shall preclude authorized representatives of officials listed in §99.31(a)(3) from having access to student and other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of or compliance with the Federal legal requirements which relate to these programs.

(b) Except when the consent of the parent of a student or an eligible student has been obtained under §99.30, or when the collection of personally identifiable information is specifically authorized by Federal law, any data collected by officials listed in §99.31(a)(3) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of or compliance with Federal legal requirements.

20 U.S.C. 1232g(b)(3))

### ;99.36 Conditions for disclosure in health and safety emergencies.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(1) The seriousness of the threat to the health or safety of the student or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

(4) The extent to which time is of the essence in dealing with the emergency.

(c) Paragraph (a) of this section shall be strictly construed.

(20 U.S.C. 1232g(b)(1)(I))

### §99.37 Conditions for disclosure of directory information.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information (as defined in §99.3) under paragraph (c) of this section.

(b) An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (c) of this section.

(c) An educational agency or institution which wishes to designate directory information shall give public notice of the following:

(1) The categories of personally identifiable information which the institution has designated as directory information;

(2) The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

(3) The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

(20 U.S.C. 1232g(a)(5)(A) and (B))

## Subpart E—Enforcement

### §99.60 Office and review board.

(a) The Secretary is required to establish or designate an office and a review board under section 438(g) of the Act. The office will investigate, process, and review violations, and complaints which may be filed concerning alleged violations of the provisions of section 438 of the Act and the regulations in this part. The review board will adjudicate cases referred to it by the office under the procedures set forth in §§99.65-99.67.

(b) The following is the address of the office which has been designated under paragraph (a) of this section: The Family Educational Rights and Privacy Act Office (FERPA), Department of Health, Education, and Welfare, 330 Independence Ave. SW., Washington, D.C. 20201.

(20 U.S.C. 1232g(g))

### §99.61 Conflict with State or local law.

An educational agency or institution which determines that it cannot comply with the requirements of section 438 of the Act or of this part because a State or local law conflicts with the provisions of section 438 of the Act or the regulations in this part shall so advise the office designated under §99.60(b) within 45 days of any such determination, giving the text and legal citation of the conflicting law.

(20 U.S.C. 1232g(f))

### §99.62 Reports and records.

Each educational agency or institution shall (a) submit reports in the form and containing such information as the Office of the Review Board may require to carry out their functions under this part, and (b) keep the records and afford access thereto as the Office or the Review Board may find necessary to assure the correctness of those reports and compliance with the provisions of sections 438 of the Act and this part.

(20 U.S.C. 1232g(f) and (g))

### §99.63 Complaint procedure.

(a) Complaints regarding violations of rights accorded parents and eligible students by section 438 of the Act or the regulations in this part shall be submitted to the Office in writing.

(b)(1) The Office will notify each complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(2) The notification to the agency or institution under paragraph (b)(1) of this section shall include the substance of the alleged violation and the agency or institution shall be given an opportunity to submit a written response.

(c)(1) The Office will investigate all timely complaints received to determine whether there has a failure to comply with the provisions of section 438 of the Act or the regulations in this part, and may permit further written or oral submissions by both parties.

(2) Following its investigation the Office will provide written notification of its findings and the basis for such findings, to the complainant and the agency or institution involved.

(3) If the Office finds that there has been a failure to comply, it will include in its notification under paragraph (c)(2) of this section, the specific steps which must be taken by the agency or educational institution to bring the agency or institution into compliance. The notification shall also set forth a reasonable period of time, given all of the circumstances of the case, for the agency or institution to voluntarily comply.

(d) If the educational agency or institution does not come into compliance within the period of time set under paragraph (c)(3) of this section, the matter will be referred to the Review Board for a hearing under §§99.64-99.67, inclusive.

(20 U.S.C. 1232g(f))

### §99.64 Termination of funding.

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (1) finds that an educational agency or institution has failed to comply with the provisions of section 438 of the Act, or the regulations in this part, and (2) determines that compliance cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in §99.1(a) shall be made available to that educational agency or institution (or, at the Secretary's discretion, to the unit of the educational agency or institution affected by the failure to comply) until there is no longer any such failure to comply.

(20 U.S.C. 1232g(f))

### §99.65 Hearing procedures.

(a) *Panels.* The Chairman of the Review Board shall designate Hearing Panels to conduct one or more hearings under §99.64. Each Panel shall consist of not less than three members of the Review Board. The Review Board may, at its discretion, sit for any hearing or class of hearings. The Chairman of the Review Board shall designate himself or any other member of a Panel to serve as Chairman.

(b) *Procedural rules.* (1) With respect to hearings involving, in the opinion of the Panel, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel (i) in whole or in part in writing or (ii) in an informal conference before the Panel which shall afford each party: (A) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and (B) an opportunity to be represented by counsel.

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity, which shall include, in addition to provisions required by subparagraph (1)(ii) of this paragraph, provisions designed to assure to each party the following:

(i) An opportunity for a record of the proceedings;

(ii) An opportunity to present witnesses on the party's behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(20 U.S.C. 1232g(g))

### §99.66 Hearing before Panel or a Hearing Officer.

A hearing pursuant to §99.65(b)(2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examiner under 5 U.S.C. 3105.

(20 U.S.C. 1232g(g))

### §99.67 Initial decision; final decision.

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initial decision shall be mailed promptly by the Panel to each party (or to the party's counsel), and to the Secretary with a notice affording the party an opportunity to submit written comments thereon to the Secretary within a specified reasonable time.

(c) The initial decision of the Panel transmitted to the Secretary shall become the final decision of the Secretary, unless, within 25 days after the expiration of the time for receipt of written comments, the Secretary advises the Review Board in writing of his determination to review the decision.

(d) In any case in which the Secretary modifies or reverses the initial decision of the Panel, he shall accompany that action with a written statement of the grounds for the modification or reversal, which shall promptly be filed with the Review Board.

(e) Review of any initial decision by the Secretary shall be based upon the decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceedings.

(f) No decision under this section shall become final until it is served upon the educational agency or institution involved or its attorney.

(20 U.S.C. 1232g(g))

# OFFICE OF MANAGEMENT AND BUDGET

■

## PRIVACY ACT IMPLEMENTATION

### Guidelines and Responsibilities

# PRIVACY ACT GUIDELINES—JULY 1, 1975[1]

## Implementation of Section 552a of Title 5 of the United States Code

TABLE OF CONTENTS


Subsection
(a) DEFINITIONS.
(1) Agency.
(2) Individual.
(3) Maintain.
(4) Record.
(5) System of Records.
(6) Statistical Record.
(7) Routine Use.
(b) CONDITIONS OF DISCLOSURE.
(1) Disclosure within the Agency.
(2) Disclosure to the Public.
(3) Disclosure for a "Routine Use".
(4) Disclosure to the Bureau of the Census.
(5) Disclosure for Statistical Research and Reporting.
(6) Disclosure to the National Archives.
(7) Disclosure for Law Enforcement Purposes.
(8) Disclosure under Emergency Circumstances.
(9) Disclosure to the Congress.
(10) Disclosure to the General Accounting Office.
(11) Disclosure Pursuant to Court Order.
(c) ACCOUNTING OF CERTAIN DISCLOSURES.
(1) When Accounting is Required.
(2) Retaining the Accounting of Disclosures.
(3) Making the Accounting of Disclosures Available to the Individual.
(4) Informing Prior Recipients of Corrected or Disputed Records.
(d) ACCESS TO RECORDS.
(1) Individual Access to Records.
(2) Requests for Amending Records.
(A) Acknowledgement of Requests to Amend Records.
(B) Actions Required on Requests to Amend Records.
(3) Requesting a Review of the Agency's Refusal to Amend a Record.
(4) Disclosure of Disputed Information.
(5) Access to Information Compiled in Anticipation of Civil Action.
(e) AGENCY REQUIREMENTS.
(1) Restrictions on Collecting Information about Individuals.
(2) Information is to be Collected Directly from the Individual.
(3) Informing Individuals from whom Information is Requested.
(4) Publication of the Annual Notice of Systems of Records.
(A) Describing the Name and Location of the System in the Public Notice.
(B) Describing Categories of Individuals in the Public Notice.
(C) Describing Categories of Records in the Public Notice.
(D) Describing Routine Uses in the Public Notice.
(E) Describing Records Management Policies and Practices in the Public Notice.
(F) Identifying Officials(s) Responsible for the System in the Public Notice.
(G) Describing Procedures for Determining if a System contains a Record on an Individual in the Public Notice.
(H) Describing Procedures for Gaining Access in the Public Notice.
(I) Describing Categories of Information Sources in the Public Notice.
(5) Standards of Accuracy.
(6) Validating Records before Disclosure.
(7) Records on Religious or Political Activities.
(8) Notification for Disclosure Under Compulsory Legal Process.
(9) Rules of Conduct for Agency Personnel.
(10) Administrative, Technical and Physical Safeguards.
(11) Notice for New/Revised Routine Uses.
(f) AGENCY RULES.
(1) Rules for Determining if an Individual is the Subject of a Record.
(2) Rules for Handling Requests for Access.
(3) Rules for Granting Access to Records.
(4) Rules for Amending Records.
(5) Rules Regarding Fees.
Annual Publication of Notices and Rules
(g) CIVIL REMEDIES.
(1) Grounds for Action.
(A) Refusal to Amend a Record.
(B) Denial of Access to a Record.
(C) Failure to Maintain a Record Accurately.
(D) Other Failures to Comply with the Act.
(2) Basis for Judicial Review and Remedies for Refusal to Amend a Record.
(3) Basis for Judicial Review and Remedies for Denial of Access.
(4) Basis for Judicial Review and Remedies for Adverse Determination and Other Failures to Comply.
(5) Jurisdiction and Time Limits.
(h) RIGHTS OF LEGAL GUARDIANS.
(i) CRIMINAL PENALTIES.
(1) Criminal Penalties for Unauthorized Disclosure.
(2) Criminal Penalties for Failure to Publish a Public Notice.
(3) Criminal Penalties for Obtaining Records Under False Pretenses.
(j) & (k) EXEMPTIONS.
(j) GENERAL EXEMPTIONS APPLICABILITY AND NOTICE REQUIREMENTS.
(1) General Exemption for the Central Intelligence Agency.
(2) General Exemption for Criminal Law Enforcement Records.
(k) SPECIFIC EXEMPTIONS APPLICABILITY AND NOTICE REQUIREMENTS.
(1) Exemption for Classified Material.
(2) Exemption for Investigatory Material Compiled for Law Enforcement Purposes.
(3) Exemption for Records Maintained to Provide Protective Services.
(4) Exemption for Statistical Records.
(5) Exemption for Investigatory Material Compiled for Determining Suitability for Federal Employment or Military Service.
(6) Exemption for Testing or Examination Material.
(7) Exemption for Material used to Evaluate Potential for Promotion in the Armed Services.
(l) ARCHIVAL RECORDS.
(1) Records Stored in GSA Records Centers.
(2) Records Archived Prior to September 27, 1975.
(3) Records Archived on or after September 27, 1975.
(m) GOVERNMENT CONTRACTORS.
(n) MAILING LISTS.
(o) REPORT ON NEW SYSTEMS.
(p) ANNUAL REPORT.
(q) EFFECT OF OTHER LAWS.


### Subsection (a) Definitions

Subsection (a) "For purposes of this section—"

*Agency.* Subsection (a)(1) "The term 'agency' means agency as defined in section 552(e) of this title;"

The definition of "agency" is the same as that used in the Administrative Procedures Act as modified by the recently enacted Freedom of Information Act amendments (Pub. L. 93-502): "'agency' means each authority of the Government of the United States, whether or not it is within or subject to review by another agency. . . ." (5 U.S.C. 551(1)). "[T]he term agency * * * includes any executive department, military department, Government corporation, Government controlled corporation or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency." (5 U.S.C. 552(e) as added by Pub. L. 93-502)

Two aspects of this definition require further explanation:

The scope of the term; i.e., what entities are covered, how has the definition of agency been broadened to encompass additional organizations as a result of the FOIA amendments?

Whether or not entities within an agency are to be considered agencies. This is particularly significant in applying subsection (b)(1), in determining what constitutes an interagency transfer.

[1]Section 3 of the Privacy Act of 1974, Pub. L. 93-579.

The first question—the scope of the definition—is covered in the House report on the FOIA amendments quoted below, as modified by the conference report language set out thereafter:

> For the purposes of this section, the definition of "agency" has been expanded to include those entities which may not be considered agencies under section 551(1) of title 5, U.S. Code, but which perform governmental functions and control information of interest to the public. The bill expands the definition of "agency" for purposes of section 552, [and 552a] title 5, United States Code. Its effect is to insure inclusion under the Act of Government corporations, Government controlled corporations, or other establishments within the executive branch, such as the U.S. Postal Service.
>
> The term "establishment in the Executive Office of the President," as used in this amendment means such functional entities as the Office of Telecommunications Policy, the Office of Management and Budget, the Council of Economic Advisers, the National Security Council, the Federal Property Council, and other similar establishments which have been or may in the future be created by Congress through statute or by Executive order.
>
> The term "Government corporation," as used in this subsection, would include a corporation that is a wholly Government-owned enterprise, established by Congress through statute, such as the St. Lawrence Seaway Development Corporation, the Federal Crop Insurance Corporation (FCIC), the Tennessee Valley Authority (TVA), and the Inter-American Foundation.
>
> The term "Government controlled Corporation," as used in this subsection, would include a corporation which is not owned by the Federal Government * * * (House Document 93-876, pp. 8-9, Report on the Freedom of Information Act amendments, H.R. 12471).
>
> The conferees state that they intend to include within the definition of "agency" those entities encompassed by 5 U.S.C. 551 and other entities including the United States Postal Service, the Postal Rate Commission, and government corporations or government-controlled corporations now in existence or which may be created in the future. They do not intend to include corporations which receive appropriated funds but are neither chartered by the Federal Government nor controlled by it, such as the Corporation for Public Broadcasting. Expansion of the definition of "agency" in this subsection is intended to broaden applicability of the Freedom of Information Act but it is not intended that the term "agency" be applied to subdivisions, offices or units within an agency.
>
> With respect to the meaning of the term "Executive Office of the President" the conferees intend the result reached in *Soucie v. David*, 448 F.2d. 1067 (C.A.D.C. 1971). The term is not to be interpreted as including the President's immediate personal staff or units in the Executive Office whose sole function is to advise and assist the President." (House Report 93-1380, p. 14-15)

Whether or not an agency can exist within an agency is a somewhat more complex issue. This is addressed, in part, in the above quotation from the conference report language in the statement "* * * but it is not intended that the term 'agency' be applied to subdivisions, offices, or units within an agency." The issue was also addressed in debate on H.R. 16373 on the House floor in a statement by Congressman Moorhead—"* * * 'agency' is given the meaning which it carries elsewhere in the Freedom of Information Act, 5 United States Code, section 551(1), as amended by H.R. 12471 of this Congress, section 552(e), on which Congress has acted to override the veto. The present bill is intended to give 'agency' its broadcast statutory meaning. This will permit employees and officers of the agency which maintains the records to have access to such records if they have a need for them in the performance of their duties. For example, within the Justice Department—which is an agency under the bill—transfer between division of the Department, the U.S. Attorney's offices, the Parole Board, and the Federal Bureau of Investigation would be on a need-for-the-record basis. Transfer outside the Justice Department to other agencies would be more specifically regulated. Thus, transfer of information between the FBI and the Criminal Division of the Justice Department for official purposes would not require additional showing or authority, in contrast to transfer of such information from the FBI to the Labor Department." (*Congressional Record* November 21, 1974, p. H10962)

In addressing this question the Justice Department has advised that

> * * * it is our firm view that the 1974 [FOIA] Amendments require no change in the original Act, that it is for the over-unit—the Department or other higher-level "agency"—to determine which of its substantially independent components will function independently for Freedom of Information Act purposes. Moreover, as the Attorney General noted inthat portion of his Memorandum dealing with the subject, "It is sometimes permissible to make the determination differently for purposes of various provisions of the Act—for example, to publish and maintain an index at the overunit level while letting the appropriate subunits handle requests for their own records." (Attorney General's Memorandum on the 1974 Amendments to the Freedom of Information Act, February, 1975, p. 28). In our view, this practice of giving variable content to the meaning of the word "agency" for various purposes can be applied to the Privacy Act as well as the Freedom of Information Act. For example, it may be desirable and in furtherance of the purposes of the Act to treat the various components of a Department as separate "agencies" for purposes of entertaining applications for access and ruling upon appeals from denials, while treating the Department as the "agency" for purposes of those provisions limiting intragovernmental exchange of records. (Of course, dissemination among components of the Department must still be only on a "need-to-know" basis. 5 U.S.C. 552a(b)(1).) Needless to say, this practice must not be employed invidiously, so as to frustrate rather than to further the purposes of the Act; and there should be a consistency between the practice under the Privacy Act and the practice for comparable purposes under the Freedom of Information Act. For this reason it seems to us doubtful (though not entirely impossible) that a Department or other over-unit which has treated its components as separate agencies for all purposes under the Freedom of Information Act could successfully maintain that all of its components can be considered a single "agency" under the Privacy Act, simply to facilitate the exchange of records (Letter from Assistant Attorney General, Office of Legal Counsel, dated April 14, 1975)

In addition to the matter of determining when a component of an agency is to be considered an agency itself when the entire agency is to be treated as a single entity, the issue arises as to whether an entity or individual servicing more than one agency may be considered an "employee" of each agency he serves, for certain purposes. While this is not specifically addressed in the Act, it is reasonable to assume that members of temporary task forces, composed of personnel of several agencies, should usually be considered employees of the lead agency and of their own agency for purposes of access to information. Similarly, members of permanent "strike forces" and personnel crossdesignated to serve the functions of two or more agencies should usually be treated as employees of both the lead agency and their own employing agency, e.g., employees or State or local officials assigned to organized crime, and customs officers cross designated to perform each others functions.

*Individual.* Subsection (a)(2) "The term 'individual' means a citizen of the United States or an alien lawfully admitted for permanent residence;"

This definition is intended to "distinguish between the rights which are given to the citizen as an individual under this Act and the rights of proprietorships, businesses, and corporations which are not intended to be covered by this Act. This distinction was to insure that the bill leaves untouched the Federal Government's information activities for such purposes as economic regulations. This definition was also included to exempt from the coverage of the bill intelligence files and data banks devoted solely to foreign nationals or maintained by the State Department, the Central Intelligence Agency and other agencies for the purpose of dealing with nonresident aliens and people in other countries." (Senate Report 93-1183, p. 79).

The language cited above suggests that a distinction can be made between individuals acting in a personal capacity and individuals acting in an entrepreneurial capacity (e.g., as sole proprietors) and that this definition (and, therefore, the Act) was intended to embrace only the former. This distinction is, of course crucial to the application of the Act since the Act, for the most part, addresses "records" which are defined as "* * * information about individuals" (subsection (a)(4)). Agencies should examine the content of the records in question to determine whether the information being maintained is, in fact, personal in nature. A secondary criterion in deciding whether the subject of an agency file is, for purposes of the Act, an individual, is the manner in which the information is used; i.e., is the subject dealt with in a personal or entrepreneurial role.

Files relating solely to nonresident aliens are not covered by any portion of the Act. Where a system of records covers both citizens and nonresident aliens, only that portion which relates to citizens or reside nt aliens is subject to the Act but agencies are encouraged to treat such systems as if they were, in their entirety, subject to the Act.

The Act and the legislative history are silent as to whether a decedent may be considered to be an individual and whether anyone may authorize the rights of the decedent to records pertaining to him maintained by Federal agencies. It would appear that the thrust of the Act was to provide certain statutory rights to living as opposed to deceased individuals. But for the provision enabling parents to act on behalf of minors and guardians to act on behalf of those deemed to be incompetent, the rights of an individual provided by the Privacy Act could not have been utilized in their behalf by those interested. The failure of the Privacy Act to so provide for decedents and the overall thrust of the Act—that individuals be given the opportunity to judge for themselves how, and the extent to which, certain information about them maintained by Federal agencies is used, and the implicit personal judgement involved in this thrust—indicates that the Act did not contemplate permitting relatives and other interested parties to exercise rights granted by the Privacy Act

to individuals after the demise of those individuals. These same records, however, may pertain as well to those living persons who might otherwise seek to exercise the decedent's right with regard to that information and thereby be covered by the Privacy Act. Furthermore, access to a decedent's records may be had in various judicial forums as a part of, or ancillary to, other proceedings.

*Maintain.* Subsection (a)(3) "The 'erm 'maintain' includes maintain, collect, use, or disseminate;"

The term "maintain" is used in two ways in the Privacy Act.

First, it is used to connote the various record keeping functions to which the requirements of the Act apply: i.e., maintaining, collecting, using, or disseminating. Thus, wherever the word "maintain" appears with reference to a record, one should understand it to mean collect, use, or disseminate or any combination of any of these record-keeping functions.

Second, it is used to connote control over and hence responsibility and accountability for systems of records. This is extremely important given the civil and criminal sanctions in subsections (g) and (i) for failure to comply with certain provisions. The ap cability of certain provisions, including the exemptions in subsections (j) and (k), can be determined by an agency's ability to demonstrate that it has effective control over a system of records. See, for example, subsections (b)(1), (d), (e)(1), (e)(9), (g), and (i) wherein the term "maintain" clearly means having effective control over a system of records. To have effective control of a system of records does not necessarily mean to have physical control of the system. When records are disclosed to Agency B from a system of records maintained by Agency A, they are then considered to be maintained by Agency B (as well as Agency A) and are subject to all of the provisions of the Act in the same manner as though Agency B had originally compiled them. If one agency turns over a record from its system of records to a second agency and that record is placed in a separate system of records maintained by the second agency, then the record becomes part of the system of records maintained by the second agency and all of the published material as to the second agency's system of records would apply to the record moved into its system.

The requirements of subsection (m) must also be carefully considered in determining which systems are to be considered as "maintained," i.e., controlled by an agency within the terms of the Act. Subsection (m) stipulates that systems of records operated under contract or, in some instances, State or local governments operating under Federal mandates "by or on behalf of the agency . . . to accomplish an agency function" are subject to the provisions of Section 3 of the Act. The intent of this provision is to make it clear that the systems "maintained" by an agency are not limited to those operated by agency personnel on agency premises but include certain systems operated pursuant to the terms of a contract to which the agency is a party. The qualifying phrase "to accomplish an agency function" limits the applicability of subsection (m) to those systems directly related to the performance of Federal agency functions by excluding from its coverage systems which are financed, in whole or part, with Federal funds, but which are managed by state or local governments for the benefit of State or local governments.

*Record.*—Subsection (a)(4) "The term 'record' means any item, collection or grouping of information about an individual that is maintained by an agency, including, but not limitrd to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;"

The term "record", as defined for purposes of the Act, means a tangible or documentary record (as opposed to a record contained in someone's memory) and has a broader meaning than the term commonly has when used in connection with record-keeping systems. (It may also differ from the usual definition of a computer record.) An understanding of the term "record", as it is used in the Act, is essential in interpreting the meaning of many of the Act's requirements.

A "record"

Means any item of information about an individual that includes an individual identifier;

Includes any grouping of such items of information (it should not be confused with the use of the term record in the conventional sense or as used in the automatic data processing (ADP) community);

Does not distinguish between data and information; both are within the scope of the definition; and

Includes individual identifiers in any form including, but not limited to, finger prints, voice prints and photographs.

The phrase "identifying particular" suggests any element of data (name, number) or other descriptor (finger print, voice print, photographs) which can be used to identify an individual. Identifying particulars are not always unique (i.e., many individuals share the same name) but when they are not unique (e.g., name) they are individually assigned—as distinguished from generic characteristics.

The term "record" was defined "to assure the intent that a record can include as little as one descriptive item about an individual." (*Congressional Record*, p. S21818, December 17, 1974 and p. H12246, December 18, 1974). This definition "includes the record of present registration, or membership in an organization or activity, or admission to an institution." (Senate Report 93-1183, p. 79). (While this language was written with reference to the definition of the term "personal information" in the Senate bill, it would appear to be equally applicable to the term "record" as used in the Act.)

A record, by this definition, can be part of another record. Therefore prohibitions on the disclosure of a record, for example, apply not only to the entire record in the conventional sense (such as a record in a computer system), but also to any item or grouping of items from a record provided that such grouping includes an individual identifier.

*System of Records.* Subsection (a)(5) "The term 'system of records' means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;"

The definition of "system of records" limits the applicability of some of the provisions of the Act to "records" which are maintained by an agency, retrieved by individual identifier (i.e., there is an indexing or retrieval capability using identifying particulars, as discussed above, built into the system), and the agency does, in fact, retrieve records about individuals by reference to some personal identifier.

A system of records for purposes of the Act must meet all of the following three criteria:

It must consist of records. See discussions of "record" (a)(4), above.

It must be "under the control of" an agency.

It must consist of records retrieved by reference to an individual name or some other personal identifier.

The phrase "* * * under the control of any agency * * *" was intended to accomplish two separate purposes: (1) To determine possession and establish accountability; and (2) to separate agency records from records which are maintained personally by employees of an agency but which are not agency records.

As previously noted, the definition of "maintain" was broadened to encompass all systems used by Federal agencies. The phrase "* * * under the control of any agency * * *" in the definition of "system of records;" was not intended to eliminate from the coverage of the Act any of those systems (which would largely negate the definition of "maintain"), but rather was intended to assign responsibility to a particular agency to discharge the obligations established by the Privacy Act. An agency is responsible for those systems which are "* * * under the control of" that agency. The concept of possession implicit in this phrase is also apparent in the language which begins most of the operative subsections of the Act. For example, the concept is evident although tacit in subsection (b); express in subsection (c) "under its control * * *"; "* * * that maintains a system of records * * *" in subsections (d), (e) and (f); "agency records" in subsection (i), and "* * * any system of records within the agency" in subsections (j) and (k).

The intent was, despite the different wording for each subsection, not to have each of the subsections apply to a different roster of systems of records, but to express, in terms of possession, for which systems of records an agency was responsible.

The second purpose of the phrase was to distinguish "agency records" from those records which, although in the physical possession of agency employees and used by them in performing official functions, were not considered "agency records." Uncirculated personal notes, papers and records which are retained or discarded at the author's discretion and over which the agency exercises no control or dominion (e.g., personal telephone lists) are not considered to be agency records within the meaning of the Privacy Act. This distinction is embodied, in part, in the phrase "under the control of" an agency as well as in the definition of "record" (5 U.S.C. 552(a)(4)).

An agency shall not classify records, which are controlled and maintained by it, as non-agency records, in order to avoid publishing notices of their existence, prevent access by the individuals to whom they pertain, or otherwise evade the requirements of the Act.

The "are retrieved by" criterion implies that the grouping of records under the control of an agency is accessed by the agency by use of a personal identifier; not merely that a capability or potential for retrieval exists. For example, an agency record-keeping system on firms it regulates may contain "records" (i.e., personal information) about officers of the firm incident to evaluating the firm's performance. Even though these are clearly "records" under the control of" an agency, they would not be considered part of a system as defined by the Act unless the agency accessed them by reference to a personal identifier (name, etc.). That is, if these hypothetical "records" are never retrieved except by reference to company identifier or some other nonpersonal indexing scheme (e.g., type of firm) they are not a part of a system of records. Agencies will necessarily have to make determinations on a system-by-system basis.

Considerable latitude is left to the agency in defining the scope or grouping of records which constitute a system. Conceivably all the "records" for a particular program can be considered a single system or the agency may consider it appropriate to segment a system by function or geographic unit and treat each segment as a "system". The implications of these decisions and some limitations on them are discussed in connection with subsection (e)(4), publication of the annual notice. Briefly, the two considerations which the agency should take into account in its decisions are

Its ability to comply with the requirements of the Act and facilitate the exercise of the rights of individuals; and

The cost and convenience to the agency, but only to the extent consistent with the first consideration.

*Statistical Record.* Subsection (a)(6) "The term 'statistical record' means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;"

A "statistical record", for purposes of this Act, is a record in a system of records that is not used by anyone in making any determination about an individual. This means that, for a record to qualify as a "statistical record", it must be held in a system which is separated from systems (some perhaps containing the same information) which contain records that are used in any manner in making decisions about the rights, benefits, or entitlements of an identifiable individual. The term "identifiable individual" is used to distinguish determinations about specific individuals from determinations about aggregates of individuals as, for example, census data are used to apportion funds on the basis of population.

By this definition, it appears that some so-called "research records" which are only used for analytic purposes qualify as "statistical records" under the Act if they are not used in making determinations. A "determination" is defined as "any decision affecting the individual which is in whole or in part based on information contained in the record and which is made by any person or any agency." (House Report 93-1416, p. 15.)

Most of the records of the Bureau of the Census are considered to be "statistical records" even though, pursuant to section 8 of title 13, United States Code, the Census Bureau is authorized to "furnish transcripts of census records for genealogical and other proper purposes and to make special statistical surveys from census data for a fee upon request." (House Report 93-1416, p. 12)

In applying this definition, it might be helpful to distinguish three types of collections or groupings of information about individuals: (1) Statistical compilations which, because they cannot be identified with individuals, are not subject to the Act at all; (2) "records" maintained solely for the purpose of compiling statistics—which are the types of records covered by (a)(6); and (3) "records" on individuals which are used both to compile statistics and also for other purposes, e.g. a criminal history record used both to compile individual statistics and to assist a judge in making a sentencing decision about the individual to whom the record pertains, which is not a "statistical record."

The term "statistical record" is used in subsection (k)(4), specific exemptions.

*Routine use.* Subsection (a)(7) "The term 'routine use' means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected."

One of the primary objectives of the Act is to restrict the use of information to the purposes for which it was collected. The term "routine use" was introduced to recognize the practical limitations of restricting use of information to explicit and expressed purposes for which it was collected. It recognizes that there are corollary purposes "compatible with the purpose for which [the information] was collected" that are appropriate and necessary for the efficient conduct of government and in the best interest of both the individual and the public. Routine uses include "transfer of information to the Treasury Department to complete payroll checks, the receipt of information by the Social Security Administration to complete quarterly posting of accounts, or other such housekeeping measures and necessarily frequent interagency or intra-agency transfers of information." (Congressional Record p. S21816, December 17, 1974 and p. H12244, December 18, 1974)

Additional guidance on the conceptual basis for "routine uses" is found in the statement of Congressman Moorhead on the House floor:

> It would be an impossible legislative task to attempt to set forth all of the appropriate uses of Federal records about an identifiable individual. It is not the purpose of the bill to restrict such ordinary uses of the information. Rather than attempting to specify each proper use of such records, the bill gives each Federal agency the authority to set forth the "routine" purposes for which the records are to be used under the guidance contained in the committee's report.
>
> In this sense "routine use" does not encompass merely the common and ordinary uses to which records are put, but also includes all of the proper and necessary uses even if any such use occurs infrequently. For example, individual income tax return records are routinely used for auditing the determination of the amount of tax due and for assistance in collection of such tax by civil proceedings. They are less often used, however, for referral to the Justice Department for possible criminal prosecution in the event of possible fraud or tax evasion, though no one would argue that such referral is improper; thus the "routine" use of such records and subsection (b)(3) might be appropriately construed to permit the Internal Revenue Service to list in its regulations such a referral as a "routine use."
>
> Again, if a Federal agency such as the Housing and Urban Development Department or the Small Business Administration were to discover a possible fraudulent scheme in one of its programs it could "routinely", as it does today, refer to relevant investigatory arm, the FBI.
>
> Mr. Chairman, the bill obviously is not intended to prohibit such necessary exchanges of information, providing its rulemaking procedures are followed. It is intended to prohibit gratuitous, ad hoc, disseminations for private or otherwise irregular purposes. To this end it would be sufficient if an agency publishes as a "routine use" of its information gathered in any program that an apparent violation of the law will be referred to the appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order. (*Congressional Record, November 21, 1974, p. H10962*)

In discussing the final language of the Act, Senator Ervin and Congressman Moorhead, in similar statements said that "[t]he compromise definition should serve as a caution to agencies to think out in advance what uses it will make of information. This Act is not intended to impose undue burdens on the transfer of information to the Treasury Department to complete payroll checks, the receipt of information by the Social Security Administration to complete quarterly posting of accounts, or other such housekeeping measures and necessarily frequent interagency or intra-agency transfers of information. It is, however, intended to discourage the unnecessary exchange of information to other persons or to agencies who may not be as sensitive to the collecting agency's reasons for using and interpreting the material." (*Congressional Record*, December 17, 1974, p. S21816 and December 18, 1974, p. H12244). This implies, at least, that a "routine use" must be not only compatible with, but related to, the purpose for which the record is maintained; e.g., development of a sampling frame for an evaluation study or other statistical purposes.

There are certain "routine uses" which are applicable to a substantial number of systems of records but which are only permissible if properly established by each agency:

Disclosures to a law enforcement agency when criminal misconduct is suspected in connection with the administration of a program; e.g., apparently falsified statements on a grant application or suspected fraud on a contract.

Disclosures to an investigative agency in the process of requesting that a background or suitability investigation be conducted on individuals being cleared for access to classified information, employment on contracts, or appointment to a position within the agency.

The Act further limits the extent to which disclosures can be made as "routine uses" by requiring an agency to establish the "routine uses" . information in each system of records which it maintains by publishing a declaration of intent in the Federal Register, thereby permitting public review and comment (subsection (e)(11)).

## Subsection (b) Conditions of Disclosure

Subsection (b) "No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—"

This subsection provides that an agency may not disclose any record contained in system of records, as defined in subsection (a)(5) above, to any person or to any other agency unless the agency which maintains the record is requested to do so by the individual to whom the record pertains or the agency has obtained the written consent of the individual or the disclosure would fall within one or more of the categories enumerated in subsections (b)(1) through (11), below. The phrase "by any means of communication" means any type of disclosure (e.g., oral disclosure, written disclosure, electronic or mechanical transfers between computers of the contents of a record).

Disclosure, however, is permissive not mandatory. An agency is authorized to disclosure a record for any purpose enumerated below when it deems that disclosure to be appropriate and consistent with the letter and intent of the Act and these guidelines.

Nothing in the privacy act should be interpreted to authorize or compel disclosures of records, not otherwise permitted or required, to anyone other than the individual to whom a record pertains pursuant to a request by the individual for access to it.

Agencies shall not automatically disclose a record to someone other than the individual to whom it pertains simply because such a disclosure is permitted by this subsection. Agencies shall continue to abide by other constraints on their authority to disclose information to a third party including, where appropriate, the likely effect upon the individual of making that disclosure. Except as prescribed in subsection (d)(1), (individual access to records) this Act does not require disclosure of a record to anyone other than the individual to whom the record pertains.

A disclosure may be either the transfer of a record or the granting of access to a record.

The fact that an individual is informed of the purposes for which information will be used when information is collected pursuant to subsection (e)(3) does not constitute consent.

There are two instances in which consent to disclose a record might be actively sought by an agency (i.e., without waiting for the individual to request that a disclosure be made).

Disclosure would properly be a "routine use" (b)(3)) but disclosure is proposed to be made before the 30 day notice period: e.g., the agency is developing a sampling frame for an evaluation study or a statistical program directly related to the purpose for which the record was established.

Disclosure is unrelated to the purpose for which the record is maintained but the individual may wish to elect to have his or her record disclosed; e.g., to have information on a Federal employment application referred to State agencies or to permit information on such an application to be checked against other Federal agencies' records.

In either case, however, care must be exercised to assure that the language of the request is not coercive and that any consequences of refusing to consent are made clear. It is particularly important that the impression not be created that consent to disclose is a prerequisite to obtaining a benefit when it is not.

The consent provision of this subsection was not intended to permit a blanket or open-ended consent clause; i.e., one which would permit the agency to disclose a record without limit. At a minimum, the consent clause should state the general purposes for, or types of recipients, to which disclosure may be made.

A record in a system of records may be disclosed without either a request from or the written consent of the individual to whom the record pertains only if disclosure is authorized below.

*Disclosure within the Agency.* Subsection (b)(1) "To those officers and employes of the agency which maintains the record who have a need for the record in the performance of their duties;"

This provision is based on a "need to know" concept. See also definition of "agency," (a)(1). It is recognized that agency personnel require access to records to discharge their duties. In discussing the conditions of disclosure provision generally, the House Committee said that "it is not the Committee's intent to impede the orderly conduct of government or delay services performed in the interests of the individual. Under the conditional disclosure provisions of the bill, 'routine' transfers will be permitted without the necessity of prior written consent. A 'non-routine' transfer is generally one in which the personal information on an individual is used for a purpose other than originally intended." (House Report 93-1416, p. 12).

This discussion suggests that some constraints on the transfer of records within the agency were intended irrespective of the definition of agency. Minimally, the recipient officer or employee must have an official "need to know." The language would also seem to imply that the use should be generally related to the purpose for which the record is maintained.

Movement of records between personnel of different agencies may in some instances be viewed as intra-agency disclosures if that movement is in connection with an inter-agency support agreement. For example, the payroll records compiled by Agency A to support Agency B in a cross-service arrangement are, arguably, being maintained by Agency A as if it were an employee of Agency B. While such transfers would meet the criteria both for intra-agency disclosure and "routine use," they should be treated as intra-agency disclosures for purposes of the accounting requirements (e)(1). In this case, however, Agency B would remain responsible and liable for the maintenance of such records in conformance with the Act.

It should be noted that the conditions of disclosure language makes no specific provision for disclosures expressly required by law other than 5 U.S.C. 552. Such disclosures, which are in effect congressionally-mandated "routine uses," should still be established as "routine uses" pursuant to subsections (e)(11) and (e)(4)(D). This is not to suggest that a "routine use" must be specifically prescribed in law.

*Disclosure to the Public.* Subsection (b)(2) "Required under section 552 of this title;" Subsection (b)(2) is intended "to preserve the status quo as interpreted by the courts regarding the disclosure of personal information" to the public under the Freedom of Information Act (*Congressional Record* p. S21817, December 17, 1974 and p. H12244, December 18, 1974). It absolves the agency of any obligation to obtain the consent of an individual before disclosing a record about him or her to a member of the public to whom the agency is required to disclose such information under the Freedom of Information Act and permits an agency to withhold a record about an individual from a member of the public only to the extent that it is permitted to do so under 552(b). Given the use of the term "required", agencies may not voluntarily make public any record which they are not required to release (i.e., those that they are permitted to withhold) without the consent of the individual unless that disclosure is permitted under one of the other portions of this subsection.

Records which have traditionally been considered to be in the public domain and are required to be disclosed to the public, such as many of the final orders and opinions of quasi-judicial agencies, press releases, etc. may be released under this provision without waiting for a specific Freedom of Information Act request. For example, opinions of quasi-judicial agencies may be sent to counsel for the parties and to legal reporting services, and press releases may be issued by agencies dealing with public record matters such as suits commenced or agency proceedings initiated. Records which the agency would elect to disclose to the public but which are not required to be disclosed (i.e., they are permitted to be withheld under the FOIA) may only be released to the public under the "routine use" provision (subsection (b)(3)). Note, however, that an agency may not rely on any provision of the Freedom of Information Act as a basis for refusing access to a record to the individual to whom it pertains, unless such refusal of access is authorized by an exemption within the Privacy Act. See subsections (d)(1) and (g) below.

*Disclosure for a "Routine Use".* Subsection (b)(3) "For a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;"

Records may be disclosed without the prior consent of the individual for a "routine use", as defined above, if that "routine use" has been established and described in the public notice about the system published pursuant to subsections (e)(4)(D), and (e)(11) below.

*Disclosure to the Bureau of the Census.* Subsection (b)(4) "To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;"

Agencies may disclose records to the Census Bureau in individually identifiable form for use by the Census Bureau pursuant to the provisions of Title 13. (Title 13 not only limits the uses which may be made of these records but also makes them immune from compulsory disclosure).

*Disclosure for Statistical Research and Reporting.* Subsection (b)(5) "To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;"

Agencies may disclose records for statistical purposes under limited conditions. The use of the phrase "in a form that is not individually identifiable" means not only that the information disclosed or transferred must be stripped of individual identifiers but also that the identity of the individual can not reasonably be deduced by anyone from tabulations or other presentations of the information (i.e., the identity of the individual can not be determined or deduced by combining various statistical records or by reference to public records or other available sources of information.) See also the discussion of "statistical record" ((a)(6)), above.

Records, whether or not statistical records as defined in (a)(6), above, may be disclosed for statistical research or reporting purposes only after the agency which maintains the record has received and evaluated a written statement which:

States the purpose for requesting the records; and

Certifies that they will only be used as statistical records.

Such written statements will be made part of the agency's accounting of disclosures under subsection (c)(1).

Fundamentally, agencies disclosing records under this provision are required to assure that information disclosed for use as a statistical research or reporting record cannot reasonably be used in any way to make determinations about individuals. One may infer from the legislative history and other portions of the Act that an objective of this provision is to reduce the possibility of matching and analysis of statistical records with other records to reconstruct individually identifiable records. An accounting of disclosures is not required when agencies publish aggregate data so long as no individual member of the population covered can be identified: for example, statistics on employee turn-over rates sick leave usage rates.

Viewed from the perspective of the recipient agencies, material material thus transferred would not constitute records for its purposes.

*Disclosure to the National Archives.* Subsection (b)(6) "To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value."

Agencies may disclose records to the National Archives of the United States pursuant to Section 2103 of Title 44 of the United States Code which provides for the preservation of records "of historical or other value". This subsection ((b)(6)) allows not only the transfer of records for preservation but also the disclosure of records to the Archivist to permit a determination as to whether preservation under Title 44 is warranted. See subsections (1)(2) and (1)(3) for a discussion of constraints on the maintenance of records by the Archives.

Records which are transferred to Federal Records Centers for safekeeping or storage do not fall within this category. Such transfers are not considered to be disclosures within the terms of this Act since the records remain under the control of the transferring agency. Federal Records Center personnel are acting on behalf of the agency which controls the records. See subsection (l)(1), below.

*Disclosure for Law Enforcement Purposes.* Subsection (b)(7) "To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;"

An agency may, upon receipt of a written request, disclose a record to another agency or unit of State or local government for a civil or criminal law enforcement activity. The request must specify

The law enforcement purpose for which the record is requested; and

The particular record requested.

Blanket requests for all records pertaining to an individual are not permitted. Agencies or other entities seeking disclosure may, of course, seek a court order as a basis for disclosure. See subsection (b)(11).

A record may also be disclosed to a law enforcement agency at the initiative of the agency which maintains the record when a violation of law is suspected; *provided*, That such disclosure has been established in advance as a "routine use" and that misconduct is related to the purposes for which the records are maintained. For example, certain loan or employment application information may be obtained with the understanding that individuals who knowingly and willfully provide inaccurate or erroneous information will be subject to criminal prosecution. This usage was explicitly addressed by Congressman Moorhead in explaining the House bill, on the floor of the House:

> It should be noted that the "routine use" exception is in addition to the exception provided for dissemination for law enforcement activity under subsection (b)(7) of the bill. Thus a requested record may be disseminated under either the "routine use" exception, the "law enforcement" exception, or both sections, depending on the circumstances of the case. (*Congressional Record* November 21, 1974, p. H10962.)

In that same discussion, additional guidance was provided on the term "head of the agency" as that term is used in this subsection ((b)):

> The words "head of the agency" deserve elaboration. The committee recognizes that the heads of Government departments cannot be expected to personally request each of the thousands of records which may properly be disseminated under this subsection. If that were required, such officials could not perform their other duties, and in many cases, they could not even perform record requesting duties alone. Such duties may be delegated, like other duties, to other officials, when absolutely necessary but never below a section chief, and this is what is contemplated by subsection (b)(7). The Attorney General, for example, will have the power to delegate the authority to request the thousands of records which may be required for the operation of the Justice Department under this section.

It should be noted that this usuage is somewhat at variance with the use of the term "agency head" in subsections (j), and (k), rules and exemptions, where delegations to this extent are neither necessary nor appropriate.

This subsection permits disclosures for law enforcement purposes only to governmental agencies "within or under the control of the United States." Disclosures to foreign (as well as to State and local) law enforcement agencies may, when appropriate, be established as "routine uses."

Records in law enforcement systems may also be disclosed for law enforcement purposes when that disclosure has properly been established as a "routine use"; e.g., statutorily authorized responses to properly made queries to the National Driver Register; transfer by a law enforcement agency of protective intelligence information to the Secret Service.

*Disclosure under Emergency Circumstances.* Subsection (b)(8) "To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;"

Agencies may disclose records when, for example, the time required to obtain the consent of the individual to whom the record pertains might result in a delay which could impair the health or safety of an individual; as in the release of medical records on a patient undergoing emergency treatment. The individual pertaining to whom records are disclosed need not necessarily be the individual whose health or safety is at peril; e.g., release of dental records on several individuals in order to identify an individual who was injured in an accident.

*Disclosure to the Congress.* Subsection (b)(9) "To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;"

This language does not authorize the disclosure of a record to members of Congress acting in their individual capacities without the consent of the individual.

*Disclosure to the General Accounting Office.* Subsection (b)(10) "To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;"

*Disclosure Pursuant to Court Order.* Subsection (b)(11) "Pursuant to the order of a court of competent jurisdiction."

## Subsection (c) Accounting of Certain Disclosures

Subsection (c) "Each agency, with respect to each system of record under its control, shall—"

*When Accounting Is Required.* Subsection (c)(1) "Except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of—

"(A) The date, nature, and purpose of each disclosure of a

record to any person or to another agency made under subsection (b) of this section; and

"(B) The name and address of the person or agency to whom the disclosure is made;"

An accounting is required

For disclosures outside the agency even when such disclosure is at the request of the individual with the written consent or at the request of the individual;

For disclosures for routine uses (see (b)(3));

For disclosures to the Bureau of the Census (see (b)(4));

For disclosures to a person or another agency for statistical research or reporting purposes (see (b)(5));

For disclosures to the Archives (see (b)(6));

For disclosures for a law enforcement activity consistent with the provisions of subsection (see (b)(7));

For disclosures upon a showing of "compelling circumstances" (see (b)(8));

For disclosures to the Congress or the Comptroller General (see (b)(9) and (10)); or

For disclosures pursuant to a court order (see (b)(11)).

An accounting of disclosures is not required

For disclosures to employees of the agency maintaining the record who have a need to have access in the performance of their official duties for the agency. (Agencies are required to establish safeguards, pursuant to subsection (e)(10), to assure that individuals who do not have a "need to know" will not have access.) (see (b)(1)); or

For disclosures to members of the public which would be required under the Freedom of Information Act (see (b)(2)).

(Note: That the accounting requirement is not one from which an energy may seek an exemption under subsections (j) and (k).)

"The term 'accounting' rather than 'record,' [was used] to indicate that an agency need not make a notation on a single document of every disclosure of a particular record. The agency may use any system it desires for keeping notations of disclosures, provided that it can construct from its system a document listing of all disclosures." (House Report 93-1416, p. 14). For example, if a list of names and other pertinent data necessary to issue payroll or benefit checks is transtransferring the record need not maintain a separate record of such transfer in each individual record provided that cord of such transfer in each individual record provided that it can construct the required accounting information when requested by the individual (subsection (c)(3)) or when necessary to inform previous recipients of any corrected or disputed information (subsection (c)(4)). The accounting should also provide a cross-reference to the basis upon which the release was made including any written documentation as is required in the case of the release of records for statistical or law enforcement purposes.

In some instances, (e.g., investigation or prosecution of suspected criminal activity) a disclosure may consist of a continuing dialogue between two agencies over a period of weeks or months. In such a situation, it may be appropriate to make a general notation that, as of a specified date, such contact was initiated and will be maintained until the conclusion of the case.

While the accounting of disclosures, when maintained apart from the record, might be considered a system of records under the Act, this could lead to the situation of having to maintain an accounting of disclosures from the original accounting and having to maintain that second accounting for five years, etc. Note that subsection (c)(3) gives an individual a right of access to the accounting which would not have been necessary if the accounting were considered a separate system of record. Therefore, it would seem that the intent was to view the accounting of disclosures as other than a system of records and to conclude that an accounting need not be maintained for disclosures from the accounting of disclosures.

*Retaining the Accounting of Disclosures.* Subsection (c)(2) "Retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;"

The purposes of the accounting are (1) to allow individuals to learn to whom records about themselves have been disclosed (subsection (c)(c)); (2) to provide a basis for subsequently advising recipients of records of any corrected or disputed records (subsection (c)(4)); and (3) to provide an audit trail for subsequent reviews of agency compliance with subsection (b) (conditions of disclosure). As discussed above, with respect to maintaining the accounting, the accounting need not be retained on a record by record basis as long as the procedures adopted by the agency permit it to satisfy these objectives. While the accounting is required to be maintained for at least five years, nothing in the Act requires the retention of the record itself where the record could otherwise lawfully be disposed of sooner.

The accounting is required to be retained for five years from the date of the disclosure unless the record is retained longer. Record retention standards remain as prescribed in applicable law and GSA regulations.

*Making the Accounting of Disclosures Available to the Individual.* Subsection (c)(3) "Except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request;"

Upon request of the individual to whom the record pertains an agency must make available to that individual all information in its accounting of disclosures except those pertaining to disclosures to another agency or government instrumentality for law enforcement purposes pursuant to subsection (b)(7) unless the system has been exempted from this provision pursuant to subsections (j) or (k). Agencies may wish to maintain the accounting of disclosure in such a manner that notations of disclosures pursuant to (b)(7) are readily segregable in order to facilitate timely release of the disclosure accounting when requested by the individual. Since the accounting will often not be maintained in a form which is readily comprehensible to the individual, the process of "making the accounting available" may entail some transformation of the accounting by the agency so as to make it intelligible to the individual. This may require the agency to compile, from the accounting, a list of those to whom the record was disclosed.

*Informing Prior Recipients of Corrected or Disputed Records.* Subsection (c)(4) "Inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made."

When a record is corrected at the request of an individual acting in accordance with subsection (d)(2) or a statement of dispute is filed as provided in subsection (d)(3), the agency maintaining the record shall notify each agency or person to which the record has been disclosed of the exact nature of the correction or that a notation of dispute has been made. If the recipient was another agency, that agency is required, in turn, to notify those to whom it disclosed the record.

This requirement does not apply to disclosures to personnel within the agency with a "need to know" or to the public under the Freedom of Information Act (subsections (b)(1) and (2)) or to disclosures made prior to September 27, 1975 for which no accounting was made. (Note that the language in subsection (c)(4) differs from the corresponding language in H.R. 16373 so that the House report discussion of this provision is no longer applicable).

Given the definition of "record" (a record may be construed to be a part of another record) and the language of subsection (d)(4), below, it would appear that the notification of correction or of the filing of a statement of disagreement is required only to the extent that the correction or disagreement pertains to the information actually disclosed; i.e., recipients of a portion of a record other than the portion which is subsequently corrected or disputed need not be informed. Where there is any doubt as to whether the corrected information was included in or might be relevant to a previous disclosure, agencies should notify the recipients in question.

The language of this subsection explicitly requires only that prior recipients be notified of corrections made pursuant to a request to amend a record by an individual and does not address records corrected for other reasons; e.g., agency staff detects erroneous data or a third party source provides corrected information. Nevertheless, agencies are encouraged to provide corrected information to previous recipients, irrespective of the means by which the correction was made whenever it is deemed feasible to do so if information included in a previous disclosure was changed particularly when the agency is aware that the correction is relevant to the recipient's uses irrespective of the means by which the correction is made.

## Subsection (d) Access to Records

Subsection (d) "Each agency that maintains a system of record shall—"

*Individual Access to Records.* Subsection (d)(1) "Upon request by an individual to gain access to his record or to any information pertaining to him which is contained in the

system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;"

An agency must, upon request: (1) inform an individual whether a system of records contains a record or records pertaining to him, (2) permit an individual to review any record pertaining to him which is contained in a system of records, (3) permit the individual to be accompanied for the purpose by a person of his choosing, and (4) permit the individual to obtain a copy of any such record in a form comprehensible to him at a reasonable cost. This provision it should be noted, gives an individual the right of access only to records which are contained in a system of records. See (a)(5), above.

This language further suggests that the Congress did not intend to require that an individual be given access to information which the agency does not retrieve by reference to his or her name or some other identifying particular. See subsection (a)(5). If an individual is named in a record about someone else (or some other type of entity) and the agency only retrieves the portion pertaining to him by reference to the other person's name (or some organization/subject identifier), the agency is not required to grant him access. Indeed, if this were not the case, it would be necessary to establish elaborate cross-references among records, thereby increasing the potential for privacy abuses. The following examples illustrate some applications of this standard.

1. A record on Joan Doe as an employee in a file of employees from which material is accessed by reference to her name (or some identifying number). This is the simplest case of a record in a system of records and Joan Doe would have a right of access.

2. A reference to Joan Doe in a record about James Smith in the same file. This is also a record within a system but Joan Doe would not have to be granted access unless the agency had devised and used an indexing capability to gain access to her record in James Smith's file.

3. A record about Joan Doe in a contract source evaluation file about her employer, Corporation X, which is not accessed by reference to individuals' names, or other identifying particulars. This is a record which is not in a system of records and, therefore, Joan Doe would not have a right of access to it. If, as in 2, above, an indexing capability were developed and used, however, such a system would become a system of records to which Joan Doe would have a right of access.

Agencies may establish fees for making copies of an individual's record but not for the cost of searching for a record or reviewing it (subsection (f)(5)). When the agency makes a copy of a record as a necessary part of its process of making the record available for review (as distinguished from responding to a request by an individual for a copy of a record), no fee may be charged. It should be noted that this provision differs from the access and fees provisions of the Freedom of Information Act.

The granting of access may not be conditioned upon any requirement to state a reason or otherwise justify the need to gain access.

Agencies shall establish requirements to verify the identity of the requester. Such requirements shall be kept to a minimum. They shall only be established when necessary reasonably to assure that an individual is not improperly granted access to records pertaining to another individual and shall not unduly impede the individual's right of access. Procedures for verifying identity will vary depending upon the nature of the records to which access is sought. For example, no verification of identity will be required of individuals seeking access to records which are otherwise available to any member of the public under 5 U.S.C. 552, the Freedom of Information Act. However, far more stringent measures should be utilized when the records sought to be accessed are medical or other sensitive records.

For individuals who seek access in person, requirements for verification of identity should be limited to information or documents which an individual is likely to have readily available (e.g., a driver's license, employee identification card, Medicare card). However, if the individual can provide no other suitable documentation, the agency should request a signed statement from the individual asserting his or her identity and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine of up to $5,000. (Subsection (i)(3).)

For systems to which access is granted by mail (by virtue of their location) verification of identity may consist of the providing of certain minimum identifying data; e.g., name, date of birth, or system personal identifier (if known to the individual). Where the sensitivity of the data warrants it; (i.e., unauthorized access could cause harm or embarrassment to the individual), a signed notarized statement may be required or other reasonable means of verifying identity which the agency may determine to be necessary, depending on the degree of sensitivity of the data involved.

Note: That section 7 of the Act forbids an agency to deny an individual any right (including access to a record) for refusing to disclose a Social Security Number unless disclosure is required by Federal statute or by other laws or regulations adopted prior to January 1, 1975.

Agencies are also permitted to require that an individual who wishes to be accompanied by another person when reviewing a record furnish a written statement authorizing discussion of his or her record in the presence of the accompanying person. This provision may not be used to require that individuals who request access and wish to authorize other persons to accompany them provide any reasons for the access or for the accompanying person's presence. It is designed to avoid disputes over whether the individual granted permission for disclosure of information to the accompanying person.

Agency procedures for complying with the individual access provisions will necessarily vary depending upon the size and nature of the system of records. Large computer-based systems of records clearly require a different approach than do small, regionally dispersed, manually maintained systems. Nevertheless the basic requirements are constant, namely the right of the individual to have access to a record pertaining to him and to have a copy made of all or any portion of such records in a form which is comprehensible to him. Putting information into a comprehensible form suggests converting computer codes to their literal meaning but not necessarily an extensive tutorial in the agency's procedures in which the record is used.

Neither the requirements to grant access nor to provide copies necessarily require that the physical record itself be made available. The form in which the record is kept (e.g., on magnetic tape) or the context of the record (e.g., access to a document may disclose records about other individuals which are not relevant to the request) may require that a record be extracted or translated in some manner; e.g., to expunge the identity of a confidential source. Whenever possible, however, the requested record should be made available in the form in which it is maintained by the agency and the extraction or translation process may not be used to withhold information in a record about the individual who requests it unless the denial of access is specifically provided for under rules issued pursuant to one of the exemption provisions (subsections (j) and (k)).

Subsection (f)(3) provides that agencies may establish "a special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him." In addressing this provision the House committee said:

> If, in the judgment of the agency, the transmission of medical information directly to a requesting individual could have an adverse effect upon such individual, the rules which the agency promulgates should provide means whereby an individual who would be adversely affected by receipt by receipt of such data may be apprised of it in a manner which would not cause such adverse effects. An example of a rule serving such purpose would be transmission to a doctor named by the requesting individual. (House Report 93-1416, pp. 16-17)

Thus, while the right of individuals to have access to medical and psychological records pertaining to them is clear, the nature and circumstances of the disclosure may warrant special procedures.

While the Act provides no specific guidance on this subject, agencies should acknowledge requests for access to records within 10 days of receipt of the request (excluding Saturdays, Sundays, and legal public holidays). Wherever practicable, that acknowledgement should indicate whether or not access can be granted and, if so, when. When access is to be granted, agencies will normally provide access to a record within 30 days (excluding Saturdays, Sundays, and legal public holidays) unless, for good cause shown, they are unable to do so, in which case the individual should be informed in writing within 30 days as to those reasons and when it is anticipated that access will be granted. A "good cause" might be the fact that the record is inactive and stored in a records center and, therefore, not as readily accessible. See subsection (l)(1). Presumably, in such cases the risk of an adverse determination being

made on the bases of a record to which access is sought and which the individual might choose to challenge is relatively low.

*Requests for Amending Records.* Subsection (d)(2) "Permit the individual to request amendment of a record pertaining to him and—"

Agencies shall establish procedures to give individuals the opportunity to request that their records be amended. The procedures may permit the individual to present a request either in person, by telephone, or through the mail but the process should not normally require that the individual present the request in person. If the agency deems it appropriate, it may require the requests be made in writing, whether presented in person or through the mail. Instructions for the preparation of a request and any forms employed should be as brief and as simple as possible. If a request is received on other than a prescribed form, the agency should not reject it or request resubmission unless additional information is essential to process the request. In that case, the inquiry to the individual should be limited to obtaining the needed additional information, not resubmission of the entire request. Incomplete or inaccurate requests should not be rejected categorically. The individual should be asked to clarify the request as needed. Requests presented in person should be screened briefly while the individual is still present, wherever possible, to assure that the request is complete so that clarification may be obtained on the spot.

These provisions for amending records are not intended to permit the alteration of evidence presented in the course of judicial, quasi-judicial or quasi-legislative proceedings. Any changes in such records should be made only through the established procedures consistent with the adversary process. These provisions are not designed to permit collateral attack upon that which has already been the subject of a judicial or quasi-judicial action. For example, these provisions are not designed to permit an individual to challenge a conviction for a criminal offense received in another forum or to reopen the assessment of a tax liability, but the individual would be able to challenge the fact that conviction or liability has been inaccurately recorded in his records.

The agency should also require verification of identity to assure that the requestors are seeking to amend records pertaining to themselves and not, inadvertently or intentionally, the records of other individuals.

*Acknowledgement of Requests to Amend Records.* Subsection (d)(2)(A) "Not later than 10 days (excluding, Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and"

A written acknowledgement by the agency of the receipt of a request to amend a record must be provided to the individual within 10 days (excluding Saturdays, Sundays, and legal public holidays). The acknowledgement should clearly describe the request (a copy of the request form may be appended to the acknowledgement) and advise the individual when he or she may expect to be advised of action taken on the request.

No separate acknowledgement of receipt is necessary if the request can be reviewed, processed, and the individual advised of the results of the review (whether complied with or denied) within the 10-day period.

For requests presented in person, written acknowledgement should be provided at the time the request is presented.

*Actions Required on Requests to Amend Records.* Subsection (d)(2)(B) "Promptly, either

(i) Make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) Inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of the refusal by the head of the agency or an officer designated by the head of the agency, and the name and business address of that official;

In reviewing an individual's request to amend a record, agencies should, wherever practicable, complete the review and advise the individual of the results within 10 days of the receipt of the request. Prompt action is necessary both to assure that records are as accurate as possible and to reduce the administrative effort which would otherwise be involved in issuing a separate acknowledgement of the receipt of the request and subsequently informing the individual of the action taken. If the nature of the request or the system of records precludes completing the review within 10 days, the required acknowledgement (subsection (d)(2)(A) above,) must be provided within ten days and the review should be completed as soon as reasonably possible, normally within 30 days from the receipt of the request (excluding Saturdays, Sundays, and legal public holidays) unless unusual circumstances preclude completing action within that time. (The number of cases on which the agency was unable to act within 30 days will be included in the annual report (subsection (p)). If the expected completion date for the review indicated in the acknowledgement cannot be met, the individual should be advised of that delay and of a revised date when the review may be expected to be completed.

"Unusual circumstances" can be viewed as situations in which records cannot be reviewed through the agency's normal process. By definition, such cases would, statistically, be the exception. A review which entails obtaining supporting data from retired records or from another agency and which could not, therefore be completed within the required time might qualify.

In reviewing a record in response to a request to amend it, the agency should assess the accuracy, relevance, timeliness, or completeness of the record in terms of the criteria established in subsection (e)(5), i.e., to assure fairness to the individual to whom the record pertains in any determination about that individual which may be made on the basis of that record.

With respect to requests to delete information, agencies must heed the criteria established in subsection (e)(1), namely, that the information must be "* * * relevant and necessary to accomplish a statutory purpose of the agency required to be accomplished by law or by executive order of the President." This is not to suggest that agencies may routinely maintain irrelevant or unnecessary information unless it is challenged by an individual, but rather that receipt of a request to delete information should cause the agency to reconsider the need for such information. Reviews in connection with the development of a system, the preparation of the public notice and the description of the purposes for which it is maintained and periodic reviews of the system, to assure that only information which is necessary for the lawful purposes for which the system of records was established is maintained in it will be the primary vehicles for assuring that only relevant and necessary information is maintained.

Agency standards for reviewing records in response to a request to amend them may, at the agency's option, be included as part of the rules promulgated pursuant to subsection (f)(4). Generally, it would seem reasonable to conclude that such standards for review need be no more stringent than is reasonably necessary to mmeet the general criteria in subsections (e)(1) and (e)(5) for accuracy, relevance, timeliness, and completeness.

Judicial review is available for agency determinations to grant an individual access and to amend or not amend a record pertaining to the individual. While the definite burden of proof for granting access is upon the agency in such judicial review, in the judicial review of the refusal of an agency to amend a record there is no similar burden upon the agency. An analogous standard may be utilized by the agencies in establishing standards for review of individual requests for amendments of records. The burden of going forward could be placed upon the individual who in most instances will know better than the agency the reasons why the record should be amended. It would be appropriate, in agency regulations setting forth the standards they will use upon review of such request, that the individual be required to supply certain information in support of his request for amendment of the record. The request would then be appropriate for resolution upon determination of preponderance of evidence.

If the agency agrees with the individual's request to amend a record, the agency shall—

Advise the individual;

Correct the record accordingly; and

Where an accounting of disclosures has been made, advise all previous recipients of the record of the fact that the correction was made and the substance of the correction.

If the agency, after its initial review of a request to amend a record, disagrees with all or any portion thereof, the agency shall

To the extent that the agency agrees with any part of the individual's request to amend, proceed as described above with respect to those portions of the record which it has amended.

Advise the individual of its refusal and the reasons therefor including the criteria for determining accuracy which were employed by the agency in conducting the review;

Inform the individual that he or she may request a further review by the agency head or by an officer of the agency designated by the agency head; and

Describe the procedures for requesting such a review including the name and address of the official to whom the

request should be directed. The procedures should be as simple and brief as possible and should indicate where the individual can seek advice or assistance in obtaining such a review.

If the recipient of the corrected information is an agency and is maintaining the information which was corrected in a system of records, it must correct its records and, under subsection (c)(4), apprise any agency or person to which it had disclosed the record of the substance of the correction. Subsequent recipient agencies should similarly correct their records and advise those to whom they had disclosed it. Agencies are encouraged to establish in their regulations, time limits by which, except under unusual circumstances, transferees of any amendment to a record.

*Requesting a Review of the Agency's Refusal To Amend a Record.* Subsection (d)(3) "Permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review, and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;"

An individual who disagrees with an agency's initial refusal to amend a record may file a request for further review of that determination. The agency head or an officer of the agency designated in writing by the agency head should undertake an independent review of the initial determination. If someone other than the agency head is designated to conduct the review, it should be an officer who is organizationally independent of or senior to the officer or employee who made the initial determination. For purposes of this section, an "officer" is defined to be "* * * a justice or judge of the United States and an individual who is—

(1) Required by law to be appointed in the civil [or military]* service by one of the following acting in an official capacity—

[*It is assumed that, while the language above does not specifically cover it, a military officer otherwise qualified as the reviewing official would be permitted to serve as the reviewing official.]

(A) The President;

(B) A court of the United States;

(C) The head of an Executive agency; or

(D) The Secretary of a military department;

(2) Engaged in the performance of a Federal function under authority of law or an Executive act; and

(3) Subject to the supervision of an authority named by paragraph (1) of this section, or the Judicial Conference of the United States, while engaged in the performance of the duties of his office. (5 U.S.C. 2104(a)).

Delegations must be made in writing. In conducting the review, the reviewing official should use the criteria of accuracy, relevance, timeliness, and completeness discussed above. The reviewing official may, at his or her option, seek such additional information as is deemed necessary to satisfy those criteria; i.e., to establish that the record contains only that information which is necessary and is as accurate, timely, and complete as necessary to assure fairness in any determination which may be made about the individual on the basis of record.

Although there is no requirement for a formal hearing, pursuant to the provisions of 5 U.S.C. 556, the agency may elect generally or on a case by case basis to use such or similar procedures. The procedures elected by the agency, however, should insure fairness to the individual and promptness in the determination. The procedures should provide that as much of the information upon which the determination is based as possible is part of the written record concerning the appeal. The records of the appeal process should be maintained by agencies only as long as is reasonably necessary for purposes of judicial review of the agency's refusal to amend a record upon appeal.

If, after conducting this review, the reviewing official also refuses to amend the record in accordance with the individual's request, the agency shall advise the individual:

Of its refusal and the reasons therefor;

Of his or her right to file a concise statement of the individual's reasons for disagreeing with the decision of the agency;

Of the procedures for filing a statement of disagreement;

That any such statement will be made available to anyone to whom the record is subsequently disclosed together with, if the agency deems it appropriate, a brief statement by the agency summarizing its reasons for refusing to amend the record;

That prior recipients of the disputed record will be provided a copy of any statement of dispute to the extent that an accounting of disclosures was maintained (see subsection (c)(4)); and

Of his or her right to seek judicial review of the agency's refusal to amend a record provided for in subsection (g)(1)(A), below.

If the reviewing official determines that the record should be amended in accordance with the individual's request, the agency should proceed as prescribed in subsection (d)(2)(B)(i), above; namely, correct the record, advise the individual, and inform previous recipients.

A notation of a dispute is required to be made only if an individual informs the agency of his or her disagreement with the agency's determination under subsection (d)(3) (appeals procedure) not to amend a record.

A final agency determination on the individual's request for a review of an agency's initial refusal to amend a record must be completed within 30 days unless the agency head determines that a fair and equitable review cannot be completed in that time. If additional time is required, the individual should be informed in writing of the reasons for the delay and of the approximate date on which the review is expected to be completed. Such extensions should not be routine and should not normally exceed an additional thirty days. Agencies will be required to report the number of cases in which review was not completed within 30 days as part of the annual report (subsection (p)).

Disclosure of disputed information. Subsection (d)(4) "In any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed";

When an individual files a statement disagreeing with the agency's decision not to amend a record, the agency should clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently access, use, or disclose it. The notation itself should be integral to the record and specific to the portion in dispute. For automated systems of records, the notation may consist of a special indicator on the entire record or the specific part of the record in dispute.

The statements of dispute need not be maintained as an integral part of the records to which they pertain. They should, however, be filed in such a manner as to permit them to be retrieved readily whenever the disputed portion of the record is to be disclosed.

If there is any question as to whether the dispute pertains to information being disclosed, the statement of dispute should be included.

When information which is the subject of a statement of dispute is subsequently disclosed, agencies must note that the information is disputed and provide a copy of the individual's statement.

Agencies may, at their discretion, include a brief summary of their reasons for not making a correction when disclosing disputed information. Such statements will normally be limited to the reasons stated to the individual under subsections (d)(2)(B)(ii) and (d)(3), above. Copies of the agency's statement need not be maintained as an integral part of the record but will be treated as part of the individual's record for purposes of granting the individual access, subsection (d)(1). However, the agency's statement will not be subject to subsections (d)(2) or (3) (amending records).

*Access to Information Compiled in Anticipation of Civil Action.* Subsection (d)(5) "Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding."

This provision is not intended to preclude access by an individual to records which are available to that individual under other procedures (e.g., pre-trial discovery). It is intended to preclude establishing by this Act a basis for access to material being prepared for use in litigation other than that established under other processes such as the Freedom of Information Act or the rules of civil procedure.

Excerpts from the House floor debate on this provision suggest that this provision was not intended to cover access to systems of records compiled or used for purposes other than litigation.

Mr. Erlenborn. Mr. Chairman, as I understand it, the purpose of the amendment is to protect, as an example, the file of the U.S. attorney or the solicitor that is prepared in anticipation of the defense of a suit against the United States for accident or some such thing?

Mr. Butler. That is the subject we have in mind.

Mr. Erlenborn. I appreciate the gentleman's concern. I think it is a real concern, and that protection ought to be afforded.

The only problem I find with that amendment is this: It would presuppose we intended the defining of "record system" to preclude that type of record. I do not think we did.

If these sorts of records are to be considered a record system under the Act, then the agency would have to go through all the formal proceedings of defining the system, its routine uses, and publishing in the Federal Register.

Frankly, I do not think the attorney's files that are collected in anticipation of a lawsuit should be subject to the application of the Act in any instance, much less the access provision. It is our concern in the access provision that it may then presuppose it is covered in the other provisions, and I do not think it should be.

Mr. Butler. Mr. Chairman, I share the gentleman's concern. When this amendment was originally drafted, it stated "access to any record" and we struck the word, "record," and inserted "information."

So we made it perfectly clear we were not elevating an investigation with the word, "record," to the status of records. We did want to make it clear there was not to be such access, because that access would be within the usual rules of civil procedure.

Mr. Erlenborn. Mr. Chairman, if the gentleman will yield further, it is the gentleman's contention, under his interpretation of the Act, that the other provisions would not apply to the attorney's files as well; is that correct?

Mr. Butler. The gentleman is correct. (*Congressional Record*, November 21, 1974 p. H10955).

While the above passage refers primarily to the defense of suits by the government it is, of course, equally applicable to the assembly of information in anticipation of government-initiated law suits.

The mere fact that records in a system of records are frequently the subject of litigation does not bring those systems of records within the scope of this provision. The information must be "compiled in reasonable anticipation of a civil action or proceeding" and therefore the purpose of the compilation governs the applicability of this provision. It would seem that in a suit in which governmental action or inaction is challenged the provision generally would not be available until the initiation of litigation or until information began to be compiled in reasonable anticipation of such litigation. Where the government is prosecuting or seeking enforcement of its laws or regulations, this provision may be applicable at the outset if information is being compiled in reasonable anticipation of a civil action or proceeding. The term civil proceeding was intended to cover those quasi-judicial and preliminary judicial steps which are the counterpart in the civil sphere of criminal proceedings as opposed to criminal litigation. Although this provision could have the effect of an exemption it is not subject to the formal rule-making procedures which govern the exemptions set forth in subsections (j) and (k). Nevertheless, agencies should utilize the specific exemptions set forth in subsections (j) and (k) to the extent that they are applicable before utilizing this provision.

## Section (e) Agency Requirements

Section (e) "Each agency that maintains a system of records shall—"

*Restrictions on Collecting Information about Individuals.* Subsection (e)(1) "Maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;"

A key objective of the Act is to reduce the amount of personal information collected by Federal agencies to reduce the risk of intentionally or inadvertently improper use of personal data. In simplest terms, information not collected about an individual cannot be misused. The Act recognizes, however, that agencies need to maintain information about individuals to discharge their responsibilities effectively.

Agencies can derive authority to collect information about individuals in one of two ways.

By the Constitution, a statute, or Executive order explicitly authorizing or directing the maintenance of a system of records; e.g., the Constitution and Title 13 of the United States Code with respect to the Census.

By the Constitution, a statute, or Executive order authorizing or directing the agency to perform a function, the discharging of which requires the maintenance of a system of records.

Each agency shall, with respect to each system of records which it maintains or proposes to maintain, identify the specific provision in law which authorizes that activity. While the Act does not specifically require it, where feasible, this statutory authority should also be cited in the annual public notice about the system published pursuant to subsection (e)(4). The authority to maintain a system of records does not give the agency the authority to maintain any information which it deems useful. Agencies shall review the nature of the information which they maintain in their systems of records to assure that it is, in fact, "relevant and necessary". Information may not be maintained merely because it is relevant; it must be both relevant and necessary. While this determination is, in the final analysis, judgmental, the following types of questions shall be considered in making such determinations:

How does the information relate to the purpose (in law) for which the system is maintained?

What are the adverse consequences, if any, of not collecting that information?

Could the need be met through the use of information that is not in individually identifiable form?

Does the information need to be collected on every individual who is the subject of a record in the system or would a sampling procedure suffice?

At what point will the information have satisfied the purpose for which it was collected; i.e., how long is it necessary to retain the information? Consistent with the Federal Records Act and related regulations could part of the record be purged?

What is the financial cost of maintaining the record as compared to the risks/adverse consequences of not maintaining it?

Is the information, while generally relevant and necessary to accomplish a statutory purpose, specifically relevant and necessary only in certain cases? For example in establishing financial need as part of assessing eligibility for a program for which need is a legitimate criterion, parental income may be relevant only for certain applicants.

Subsection (e)(7), below, provides additional criteria governing the maintenance of records on the activities of individuals in exercising their rights under the First Amendment.

This provision does not authorize agencies to destroy records which they are required to retain under the Federal Records Act.

Agencies shall assess the legality of, need for, and relevance of the information contained or proposed to be contained in each of its systems of records at various times:

In preparing initial public notices (subsection (e)(4)).

In connection with the initial design of a new system of records (subsection (o)).

Whenever any change is proposed in system of records (subsection (o)).

At least annually, as part of a regular program of review of its record-keeping practices. This should be done for each system prior to reissuance of the public notice unless a comprehensive review of the system of records was conducted within the previous year in connection with the initiation of the system or implementation of a change to the system.

This provision does not require that each agency conduct a detailed review of the contents of each record in its possession. Rather, agencies shall consider the relevance of, and necessity for, the general categories of information maintained and, incident to using or disclosing any individual records, examine their content to assure compliance with this provision.

It should be noted that subsection (e) is not intended to interfere with the presentation of evidence by the parties before a quasi-judicial or quasi-legislative body. For example, a quasi-judicial board or commission need not reject otherwise admissible evidence because it is proferred by a part other than the individual to whom it relates or because it is not "necessary" to the decision or is not "complete." The normal rules of evidence would contain to govern in such situations.

*Information is to be Collected Directly from the Individual.* Subsection (e)(2) "Collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits and privileges under Federal programs;"

This provision stems from a concern that individuals may be denied benefits, or that other adverse determinations affecting them may be made by Federal agencies on the basis of information obtained from third party sources which could be erroneous, outdated, irrelevant, or biased. This provision establishes the requirement that decisions under Federal programs which affect an individual should be made on the basis of information supplied by that individual for the pur-

pose of making those determinations but recognizes the practical limitations of this by qualifying the requirement with the words "to the extent practicable". The notion of protecting the individual against adverse determinations based on information supplied to other agencies for other purposes is also embodied in the provisions of subsection (b) which constrains the transfer of records between agencies; subsection (d)(2), which gives individuals the opportunity to challenge the accuracy of agency records pertaining to them; and subsection (e)(4) which prohibits the keeping of secret files.

Except for certain "statistical records" (subsection (a)(6)), which, by definition, are "not used in whole or in part in making a determination about an individual * * *", virtually any other record could be used, in making a "determination about an individual's rights, benefits, or privileges * * *" including employment. The practical effect of this provision is to require that information collected for inclusion in any system of records, other than "statistical records", should be obtained directly from the individual whenever practicable.

Practical considerations (including cost) may dictate that a third-party source, including systems of records maintained by another agency, be used as a source of information in some cases. In analyzing each situation where it proposes to collect personal information from a third party source, agencies should consider:

The nature of the program; i.e., it may well be that the kind of information needed can only be obtained from a third party such as investigations of possible criminal misconduct;

the cost of collecting the information directly from the individual as compared with the cost of collecting it from a third party;

The risk that the particular elements of information proposed to be collected from third parties, if inaccurate, could result in an adverse determination;

The need to insure the accuracy of information supplied by an individual by verifying it with a third party or to obtain a qualitative assessment of his or her capabilities (e.g., in connection with reviews of applications for grants, contracts or employment); and

Provisions for verifying, whenever possible, any such third-party information with the individual before making a determination based on that information.

It should be noted that a determination by Agency (A) that it is in its best interest and consistent with this subsection to obtain information about an individual from Agency (B) instead of directly from the individual does not constitute, in and of itself, sufficient grounds for Agency (B) to release that information to Agency (A). Agency (B) is minimally required to meet the requirements of any statutory constraints on the permissibility of making a disclosure to Agency (A) including the conditions of disclosure, in subsection (b).

The standards and procedures set forth in the Federal Reports Act (44 USC 3501) as they apply to other than individuals as defined by this Act remain the same. When information is sought, however, from ten or more individuals, as defined by the Privacy Act, in response to identical questions, the Federal Reports Act requirement that the reporting burden upon individuals be reduced to a minimum should not be construed to override the later enacted requirement that, to the greatest practicable extent, information pertaining to individuals be collected directly from them.

*Informing Individuals from Whom Information is Requested.* Subsection (e)(3) "Inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—"

This provision is intended to assure that individuals from whom information about themselves is collected are informed of the reasons for requesting the information, how it may be used, and what the consequences are, if any, of not providing the information.

Implicit in this subsection is the notion of informed consent since an individual should be provided with sufficient information about the request for information to make an informed decision on whether or not to respond. Note however, that the act of informing the individual of the purpose(s) for which a record may be used does not, in and of itself, satisfy the requirement to obtain consent for disclosing the record. See sub.ection (b), conditions of disclosure.

The information called for in paragraphs (A) through (D) below, should be included on the information collection form, on a tear-off sheet attached to the form, or on a separate sheet which the individual can retain, whichever is most practical. When information is being collected in an interview, the interviewer should provide the individual with a statement that the individual can retain. However, the interviewer should also orally summarize that information before the interview begins. Agencies may, at their discretion, ask the individuals to acknowledge in writing that they have been duly informed.

While this provision does not explicitly require it, agencies should, where feasible, inform third-party sources of the purposes for which information which they are asked to provide will be used. In addition, the agency may, under certain circumstances, assure a source that his or her identity will not be revealed to the subject of the record (see subsection (k)(2), (5), and (7)). The appropriate use of third-party sources is discussed in subsection (e)(2) above.

In providing the information required by subsections (e)(3)(A) through (D), below, care should be exercised to assure that easily understood language is used and that the material is explicit and informative without being so lengthy as to deter an individual from reading it. Information provided pursuant to this requirement would not, for example, be as extensive as that contained in the system notice (subsection (e)(4)).

It was not the intent of this subsection to create a right the nonobservance of which would preclude the use of the information or void an action taken on the basis of that information. For example, a failure to comply with this section, in collecting crop yield data from a farmer, was not intended to vitiate a crop import quota based, in part, upon such information. However, such an individual may have grounds for civil action under subsection (g)(1)(D) if he can show harm as a result of that determination.

Subsection (e)(3)(A) "The authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;"

The agency should cite the specific provision in statute or Executive order which authorizes the agency to collect the requested information (see subsection (e)(1) above), the brief title or subject of that statute or order, and whether or not the collecting agency is required to impose penalties for failing to respond or is authorized to impose penalties. Where the system is maintained pursuant to some more general requirement or authority, it should be cited. The question of whether compliance is mandatory or voluntary is different from the question of whether there are any consequences of not providing information; i.e., the law may not require individuals to apply for a benefit but clearly, for some types of voluntary programs, to apply without supplying certain minimal information might preclude an agency from making an informed judgment and thereby prevent an individual from obtaining a benefit. (See subsection (e)(3)(D) regarding the requirements to inform individuals of the effects, if any, of not providing information.)

In some instances it may be necessary to include required and optional information on the same data collection form. This should be avoided to the extent possible since the likely effect on some respondents may be coercive; i.e., they may fear that, even though portions of any information request are voluntary, by failing to respond, they may be perceived to be uncooperative and their opportunities would thereby be prejudiced. (See 44 U.S.C. 3511, the Federal Reports Act.)

Subsection (e)(3)(B) "The principal purpose or purposes for which the information is intended to be used;"

The individual should be informed of the principal purpose(s) for which the information will be used; e.g., to evaluate suitability, to issue benefit payments. The description of purpose(s) must include all major purposes for which the record will be used by the agency which maintains it and particularly those likely to entail determinations as to the individual's rights, benefits, etc. As in all other portions of the information collection process, purposes should be stated with sufficient specificity to communicate to an individual without being so lengthy as to discourage reading of the notice. Generally, the purposes will be directly related to, and necessary for, the purpose authorized by the statute or executive order cited above.

Subsection (e)(3)(C) "The routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and"

"Uses" can be distinguished from "purposes" in that "purposes" describe the objectives for collecting or maintaining information, whereas "uses" are the specific ways or processes in which the information is employed including the

persons or agencies to whom the record may be disclosed. For example, the purposes for collecting information may be to evaluate an application for a veterans' benefit and issue checks. Uses might include verification of certain information with the Department of Defense and release of check-issue data to the Treasury Department, or disclose to the Justice Department that the applicant apparently intentionally provided false or misleading information.

The term "routine use" is defined in subsection (a)(7) to mean the disclosure of a record "* * * for a purpose which is compatible with the purpose for which it was collected." A "routine use" is one which is relatable and necessary to a purpose described pursuant to subsection (e)(3)(B), and involves disclosure outside the agency which maintains the record. "Routine uses" must be included not only in the public notice about the system of records published in accordance with subsection (e)(4), below, but also established in advance by notice in the Federal Register to permit public comment. See subsection (e)(11), below.

The description of "routine uses" provided to the individual at the time information is collected will frequently be a summary of the material published in the public notice pursuant to subsection (e)(4)(D). As with other portions of the notification to the individual, care should be exercised to tailor the length and tone of the notice to the circumstances; i.e., the public notice published pursuant to subsection (e)(4) can be much more detailed than the notice to the individual appended to an information collection form.

Subsection (e)(3)(D) "The effects on him, if any, of not providing all or any part of the requested information";

The intent of this subsection is to allow an individual from whom personal information is requested to know the effects (beneficial and adverse), if any, of not providing any part or all of the requested information so that he or she can make an informed decision as to whether to provide the information requested on an information collection form or in an interview.

The individual should be informed of the effects, if any, of not responding. This should be stated in a manner which relates to the purposes for which the information is collected; e.g., the information is needed to evaluate disabled veterans for special counseling and training and if it is not provided, no additional training will be considered but disability annuities payments will continue. Particular care must be exercised in the drafting of the wording of the notice to assure that the respondent to the information request is not misled or inadvertently coerced.

*Publication of the Annual Notice of Systems of Records.* Subsection (e)(4) "Subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register at least annually a notice of the existence and character of the system of records, which notice shall include—"

The public notice provision is central to the achievement of one of the basic objectives of the Act; fostering agency accountability through a system of public scrutiny. The public notice provision is premised on the concept that there should be no system of records whose very existence is secret.

The purposes of the notice are to inform the public of the existence of systems of records;

The kinds of information maintained;

The kinds of individuals on whom information is maintained;

The purposes for which they are used; and

How individuals can exercise their rights under the Act.

All systems of records maintained by an agency are subject to the annual public notice requirement. (The general and special exemption sections permit agencies to omit portions of the notice for certain systems. They do not exempt any agency from publishing a public notice on any system of records).

Care must be exercised to assure that the tone, language, level of detail and length of the public notice are considered to assure that the notice achieves the objective of informing the public of the nature and purposes of agency systems of records.

Defining what constitutes a "system" for purposes of preparing a notice will be left to agency discretion within the general guidelines contained herein. (See also subsection (a)(5)). A system can be a small group of records or, conceivably, the entire complex of records used by an agency for a particular program. Several factors bear on the determination by the agency as to what will constitute a system:

If each small grouping of records is treated as a separate system, then public notices and procedures will be required for each. The publication of numerous notices may have the effect of limiting the information value to the public.

If a large complex of records is treated as a single system, only one notice will be required but that notice and the procedures may be considerably more complex.

Agencies can expect to be required to respond to individual requests for access to records pertaining to them at the level of detail in their public notices, i.e., if an agency treats its records for a particular program as a single system, it may be called upon by an individual to be given access to all information in records pertaining to that individual in the system.

The purpose(s) of a system is the most important criterion in determining whether a system is to be treated as a single system or several systems for the purposes of the Act. If each of several groupings of agency records is used for a unique purpose or set of purposes, as delineated in subsection (e)(3)(B) above, each may appropriately be treated as a separate system. Agencies should keep in mind that a major purpose of the Act is not the restructuring of existing systems of records, but rather the publicizing of what those systems are and how they are used. It does not, of course, preclude such restructuring where otherwise necessary or appropriate such as to reduce the risk of improper access.

Geographic decentralization will not in and of itself be considered a criterion for viewing a system of records as several systems. An agency may treat a decentralized system as a single system and specify several locations and an agency official responsible for the system at each location. See subsections (e)(4)(A) and (F). While the development of central indexes for systems which do not presently require such indexes should be avoided wherever possible, individuals who seek to learn whether a geographically decentralized system of records contains a record pertaining to them (subsection (f)(1)) should not be required to query each location. (In deciding whether or not to construct an index, agencies must weigh the potential threat of misuse posed by making individual records more accessible against the capability to meet the needs of those individuals for access to their records). It may, however, be possible to guide individuals as to which location may have a record pertaining to them; e.g., systems segmented by location of birth, or by range of identification number. In any case, "if a system is located in more than one place, each location must be listed." (House Report 93-1416, p. 15) See subsection (e)(4)(A).

A major criterion in determining whether a grouping of records constitutes one system or several, for purposes of the Act, will be the ability to be responsive to the requests of the individual for access to records and generally to be informed.

Systems, however, should not be subdivided or reorganized so that information which would otherwise have been subject to the Act is no longer subject to the Act. For example, if an agency maintains a series of records not arranged by name or personal identifier but uses a separate index file to retrieve records by name or personal identifier it should not treat these files as separate systems.

A public notice is required to be published:

For each system in operation on September 27, 1975 on or prior to that date and the notice shall be republished, including any revisions, on or before August 30, each year thereafter.

For new systems, before the system of records becomes operational; i.e., before any information about individuals is collected.

It should be noted that each "routine use" of a system must have been established in a notice published for public comment at least 30 days prior to the disclosure of a record for that "routine use" as specified in subsection (e)(11).

For major changes to existing systems, a revised public notice is required before that change is effective. If the change to an existing system involves changes to "routine uses", they are subject to the 30 day advance notice provisions of subsection (e)(11). The nature of the changes in a system which would require the issuance of a revised public notice before the next annual public notice is described for each element of the public notice in the succeeding paragraphs. Generally, any change in a system which has the effect of expanding the categories of records maintained, the categories of individuals on whom records are maintained, or the potential recipients of the information, will require the publication of a revised public notice before the change is put into effect. In addition, any modification that alters the procedures by which individuals exercise their rights under the Act (e.g., for gaining access) will require the publication of a revised notice before that change becomes effective.

Changes of the type described above will typically also

require the preparation of a "Report on New Systems" under subsection (o), below. Any other change will be incorporated into the next annual revision of the notice.

The General Services Administration (Office of the Federal Register) will issue more detailed guidance on the formats to be used by agencies in publishing their public notices. The formats prescribed by GSA are to be used to facilitate the annual compilation of the notices and to assure that notices are produced in a consistent manner to make them more useful to the public.

*Describing the Name and Location of the System in the Public Notice.* Subsection (e)(4)(A) "The name and location of the system"

Agencies will specify each city/town and site at which the system of records is located. For a geographically dispersed system each location should be listed. A change in the list of locations will not require publication of a revised notice.

While the House report language cited above clearly indicated that the location of each site at which the system is maintained is to be listed, exceptional situations may dictate not including the listing in the body of the notice; e.g., military personnel records which are kept at several hundred installations or certain farmer records which are kept at several thousand county extension agent offices. To include the list of locations in each applicable notice would only serve to inflate the size and thereby reduce the readability of the notice. In these instances, it may be appropriate to publish a single list of field stations, or to refer in the notice for all systems at those sites to a list which is generally available.

*Describing Categories of Individuals in the Public Notice.* Subsection (e)(4)(B) "The categories of individuals on whom records are maintained in the system;"

"The purpose of this requirement is for an individual to determine if information on him might be in [the] system. The description of the categories should therefore be clearly stated in non-technical terms understandable to individuals unfamiliar with data collection techniques." (House Report 93-1416, p. 15). For example, the notice might indicate that the records are maintained on students who applied for loans under a student loan program, not persons who filed form X or who are eligible under section ABC-000.

Any change which has the effect of adding new categories of individuals on whom records are maintained will require publication of a revised public notice. If, in the absence of a revised notice, an individual who is the subject of a record in the system would not recognize that fact, a revision should be issued before that change is put into effect. A narrowing of the coverage of the system does not require advance issuance of a revised notice.

*Describing Categories of Records in the Public Notice.* Subsection (e)(4)(C) "The categories of records maintained in the system;"

This portion of the notice should briefly describe the types of information contained in the system; e.g., employment history or earnings records. As with the previous item, non-technical terms should be used. The addition of any new categories of records not within the categories described in the then current public notice will require the issuance of a revised public notice before that change is put into effect. The addition of a new data element clearly within the scope of the categories in the notice would not require the issuance of a revised notice.

*Describing Routine Uses in the Public Notice.* Subsection (e)(4)(D) "Each routine use of the records contained in the system, including the categories of users and the purpose of such use;"

In describing the "routine uses" of the system in the public notice, the notice should be sufficiently explicit to communicate to a reader unfamiliar with the technical aspects of the system or the agency's program.

For a more extensive discussion of "routine uses," see subsections (a)(7) (definitions), (b)(3) (conditions of disclosure), (e)(3)(C) (notification to the individual), and (e)(11) (notice of routine uses).

Any new use or significant change in an existing use of the system which has the effect of expanding the availability of the information in the system will require publication of a revised public notice. Any such change in a routine use must also be described in a notice in the Federal Register to permit public comment before it is implemented.

*Describing Records Management Policies and Practices in the Public Notice.* Subsection (e)(4)(E) "The policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records";

This portion of the public notice should describe how the records are maintained, how they are safeguarded, what categories of officials within the agency are permitted to have access, and how long records are retained both on the agency's premises and at secondary storage sites.

In describing record "storage", the agency should indicate the medium in which the records are maintained (e.g., file folders, magnetic tape). "Retrievability" covers the capabilities in the system of records to index and access a record (e.g., by name, combinations of personal characteristics, identification numbers). "Access controls" describes, in general terms, what measures have been taken to prevent unauthorized disclosure of records (e.g., physical security, personnel screening) and what categories of individuals within the agency have access. "Retention" and "disposal" cover the rules on how long records are maintained, if and when they are moved to a Federal Records Center or to the Archives, if and how they are destroyed. The description shall not describe security safeguards in such detail as to increase the risk of unauthorized access to the records.

Changes in this item will not normally require immediate publication of a revised public notice unless they reflect an expansion in the availability of or access to the system of records.

*Identifying Official(s) Responsible for the System in the Public Notice.* Subsection (e)(4)(F) "The title and business address of the agency official who is responsible for the system of records";

This portion of the notice must include the title and address of the agency official who is responsible for the policies and practices governing the system described in (e)(4)(E), above. For geographically dispersed systems, where individuals must deal directly with agency officials at each location in order to exercise their rights under the Act (e.g., to gain access), the title and address of the responsible official at each location should be listed in addition to the agency official responsible for the entire system. See discussion of subsection (e)(4)(A), above, for special treatment of certain multiple location systems.

A revised public notice shall be issued before the implementation of any change in the address to which individuals may present themselves in person to inquire whether they are the subject of a record in the system or to seek access to a record or in the address to which individuals may mail inquiries, unless the agency has established internal procedures to assure that mail will be forwarded promptly so that the agency will be able to respond to inquiries within the time constraints established in subsection (d). Generally, changes of this type in the interim between the annual publications of the compilation of notices should be avoided if at all possible. Individuals are more likely to rely upon the annual compilation and are not as likely to be aware of modifications publicized only by means of separate notice in the Federal Register.

*Describing Procedures for Determining if a System Contains a Record on an Individual in the Public Notice.* Subsection (e)(4)(G) "The agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;"

This portion of the notice should specify as a minimum, the following:

The address of the agency office to which inquiries should be addressed or addresses of the location(s) at which the individual may present a request in person. Wherever practicable, this list should be the same as the list of officials responsible for the system in subsection (e)(4)(F), above. If this is the case, it need not be reported.

What identifying information is required to ascertain whether or not the system contains a record about the inquirer.

The agency may require proof of identity only where it has made a determination that knowledge of the fact that a record about an individual exist would not be required to be disclosed to a member of the public under section 552 of Title 5 of the United States Code (the Freedom of Information Act). For example, an agency may determine that disclosure of a record in a file pertaining to conflicts of interests would be a clearly unwarranted invasion of personal privacy, within the meaning of 5 U.S.C. 552(b)(6), and in this instance the agency may require proof of identity.

A revised public notice will be issued before effecting any change which meets the criteria outlined in subsection (e)(4)(F), above.

This portion of the notice must be consistent with agency rules promulgated pursuant to subsection (f)(1). Any change in these procedures is subject to the requirements of the Administrative Procedure Act as specified in subsection (f).

*Describing Procedures for Gaining Access in the Public No-*

tice. Subsection (e)(4)(H) "The agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and"

This portion of the public notice must include the mailing address(es) and, if possible, the telephone number(s) of official(s) who can provide assistance; and the location of offices to which the individual may go to seek information.

This provision does not specifically require that the actual procedures for obtaining access or for contesting the accuracy of a record be included in the public notice. It only requires that individuals be advised of the means by which they can obtain information on those procedures. However, it should be noted that, pursuant to subsection (f), agencies are required to publish rules which stipulate the procedures whereby the individual can exercise each of these rights and that these rules are required to be incorporated into the annual compilation of notices and rules published by the Office of the Federal Register.

A revised public notice shall be issued before effecting any change about which the individual would have to know in order to exercise his or her rights under the Act. Changes of this type in the interim between the annual publications of the compilation of notices should be avoided if at all possible.

This portion of the notice must be consistent with agency rules promulgated pursuant to subsections (f)(2) and (3). Any change in these procedures is subject to the requirements of the Administrative Procedure Act as specified in subsection (f).

*Describing Categories of Information Sources in the Public Notice.* Subsection (e)(4)(I) "The categories of sources of records in the system;"

For systems of records which contain information obtained from sources other than the individual to whom the records pertain, the notice should list the types of sources used; e.g.,

Previous employers,

Financial institutions,

Educational institutions attended, or

Peer reviewers (such as in connection with records of the review of proposals for research projects)

The notice should indicate if the individual to whom the records pertain is a source of the information in the record. Otherwise all the notices will appear to be violating the requirement that individuals be the main source of information pertaining to them.

Specific individuals or institutions need not be identified. Guidance on when the identity of a source may be withheld is contained in subsection (k)(2), (5) and (7).

*Standards of Accuracy.* Subsection (e)(5) "Maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;"

The objective of this provision is to minimize, if not eliminate, the risk that an agency will make an adverse determination about an individual on the basis of inaccurate, incomplete, irrelevant, or out-of-date records that it maintains. Since the final determination as to accuracy is necessarily judgmental, it is particularly critical that this judgment be made with an understanding of the intent of the Act.

The Act recognizes the difficulty of establishing absolute standards of data quality by conditioning the requirement with the language "as is reasonably necessary to assure fairness to the individual * * *." This places the emphasis on assuring the quality of the record in terms of the use of the record in making decisions affecting the rights, benefits, entitlements, or opportunities (including employment) of the individual.

A corollary provision (subsection (e)(6), below) requires that agencies apply the same standard to records which are disclosed, except when they are disclosed to a member of the public under the Freedom of Information Act or to another agency. (An agency would be subject to the Act and, therefore, would have to apply its own standards of accuracy, etc.)

Agencies may develop tolerances for "accuracy" and "timeliness" giving consideration to the likelihood that errors within those tolerances could result in an erroneous decision with adverse consequences to the individual (e.g., denial of rights, benefits, entitlements, or employment). For example, for its purposes in determining entitlements based on income, it may only be necessary for an agency to record the fact that income was greater than or less than a stipulated level rather than to ascertain and record the precise amount. In questionable instances, reverification of pertinent information with the individual to whom it pertains may be appropriate.

Useful criteria for assuring "relevance" and "completeness" may be somewhat more difficult to develop. The pursuit of "completeness" could result in the collection of irrelevant information which, if taken into account in making an agency determination could prejudice the decision. Agencies must limit their records to those elements of information which clearly bear on the determination(s) for which the records are intended to be used, and assure that all elements necessary to the determinations are present before the determination is made.

*Validating Records Before Disclosure.* Subsection (e)(6) "Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;"

While the Act recognizes that an agency cannot guarantee the absolute accuracy of its systems of records, any record disclosed to a person outside the agency (except another agency) must be as accurate as appropriate for purposes of the agency which maintained the record. (See subsection (e)(5)). The only exceptions to this requirement are for disclosures to another agency or to the public under the Freedom of Information Act which may not be delayed or impeded.

Recognizing that an agency properly disclosing information (pursuant to subsection (b), conditions of disclosure) is often not in a position to evaluate acceptable tolerances of error for the purposes of the recipient of the information, the primary objective of this provision is, nonetheless, to assure that reasonable efforts are made to assure the quality of records disclosed to persons who are not subject to the provisions of subsection (e)(5). The agency must, therefore, make reasonable efforts to assure that a record it discloses is as accurate, relevant, timely, and complete as would be reasonably necessary to assure fairness in any determination that it might make on the basis of that record. It may, for example, be appropriate to advise recipients that the information disclosed was accurate as of a specific date, such as the last date on which a determination was made by the agency on the basis of the record or of other known limits on its accuracy e.g., its source.

*Records on Religious or Political Activities.* Subsection (e)(7) "Maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;"

Whereas subsection (e)(1) generally enjoins agencies from collecting information not "relevant and necessary to accomplish a purpose of the agency," this provisions establishes an even more rigorous standard governing the maintenance of records regarding the exercise of First Amendment rights. These include, but are not limited to religious and political beliefs, freedom of speech and of the press, and freedom of assembly and petition.

In determining whether or not a particular activity constitutes the exercise of a right "guaranteed by the First Amendment", agencies will apply the broadest reasonable interpretation.

Records describing the exercise of these rights may be maintained only if one of the following conditions is met:

A statute specifically authorizes it. Specific authorization means that a statute explicitly provides that an agency may maintain records on activities whose exercise is covered by the First Amendment; not merely that the agency is authorized to establish a system of records. However, the statute need not address itself specifically to the maintenance of records of First Amendment activities if it specifies that such activities are relevant to a determination concerning the individual. For example, since the Immigration and Nationality Act makes the possibility of religious or political persecution relevant to a stay of deportation, the information on these subjects may be admitted in evidence, and therefore would not be prohibited by this provision.

The individual expressly authorizes it; e.g., a member of the armed forces may indicate a religious preference so that, if seriously injured or killed while on duty, the proper clergyman can be called. The individual may also volunteer such information and if he does so, the agency is not precluded from accepting and retaining it. Thus, if an applicant for political appointment should list his political affiliation, association memberships ,and religious activities, the agency may retain this as part of his application file or include it in an official biography. Similarly, if an individual volunteers information on civic or religious activities in order to enhance his chances of receiving a benefit, such as executive

clemency, the agency may consider information thus volunteered. However, nothing in the request for information should in any way suggest that information on an individual's First Amendment activities is required.

The record is required by the agency for an authorized law enforcement function.

In the discussions on the floor of the House regarding the authority to maintain such records for law enforcement purposes, it was stated that the objective of the law enforcement qualification on the general prohibition was "to make certain that political and religious activities are not used as a cover for illegal or subversive activities." However, it was agreed that "no file would be kept of persons who are merely exercising their constitutional rights * * *" and that in accepting this qualification "there was no intention to interfere with First Amendment rights" (*Congressional Record*, November 20, 1974, H10892 and November 21, 1974, H10952)

*Notification for Disclosures under Compulsory Legal Process.* Subsection (e)(8) "Make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;"

When a record is disclosed under compulsory legal process (e.g., pursuant to subsection (b)(11)), and the issuance of that order or subpoena is made public by the court or agency which issued it, agencies must make reasonable efforts to notify the individual to whom the record pertains. This may be accomplished by notifying the individual by mail at his or her last known address. The most recent address in the agency's records will suffice for this purpose and no separate address records are required. Upon being served with an order to disclose a record, the agency should endeavor to determine whether the issuance of the order is a matter of public record and, if it is not, seek to be advised when it becomes public. An accounting of the disclosure, pursuant to subsection (c)(1), is also required to be made at the time the agency complies with the order or subpoena.

*Rules of Conduct for Agency Personnel.* Subsection (e)(9) "Establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;"

Effective compliance with the provisions of this Act will require informed and active support of a broad cross section of agency personnel. It is important that all personnel who in any way have access to systems of records or who are engaged in the development of procedures or systems for handling records, be informed of the requirements of the Act and be adequately trained in agency procedures developed to implement the Act. Personnel with particular concerns include, but are not limited to, those engaged in personnel management, paperwork management (reports, forms, records, and related functions), computer systems development and operations, communications, statistical data collection and analysis, and program evaluation. (The Communications Act of 1934 prescribes standards and penalties for personnel engaged in handling interstate communications and shall also be consulted, where applicable, when agency rules of conduct are being developed).

Activities under this provision will include

The incorporation of provisions on privacy into agency standards of conduct;

The discussion of individual employee responsibilities under the Act in general personnel orientation programs; and

The incorporation of training on the specific procedural requirements of the Act into both formal and informal (on-the-job) training programs.

Concurrently, those agencies with broad policy development and training responsibilities (e.g., the General Services Administration, the Civil Service Commission) will also be revising their programs as appropriate to augment agency activities in this area.

This provision is also important in ensuring that individuals who are potentially criminally liable or whose actions could expose the agency to civil suit (under subsections (i) and (g), respectively) are fully informed of their obligations under the Act.

*Administrative, Technical and Physical Safeguards.* Subsection (e)(10) "Establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;"

The development of appropriate administrative, technical, and physical safeguards will, necessarily, have to be tailored to the requirements of each system of records and other related requirements for security and confidentiality. The need to assure the integrity of and to prevent unauthorized access to, systems of records will be determined not only by the requirements of this Act but also by other factors like the requirement for continuity of agency operations, the need to protect proprietary data, applicable access restrictions to protect the national security, and the need for accuracy and reliability of agency information.

While the technology of system security (both for computer-based and other systems of records) is well developed as it relates to materials classified for reason of national defense or foreign policy, few standards currently exist to guide the "civil" agency in this area. Until such standards are developed and promulgated, agencies will be required to analyze each system as to the risk of improper disclosure of records and the cost and availability of measures to minimize those risks. The Department of Commerce (National Bureau of Standards) will be issuing guidelines and standards to assist agencies in evaluating various technological approaches to providing security safeguards in their system and for assessing risks.

*Notice for New/Revised Routine Uses.* Subsection (e)(11) "At least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency."

Agencies are required to publish in the Federal Register a notice of their intention to establish "routine uses" for each of their systems of records. Although this provision is designed to supplant the informal rule-making provisions of 5 U.S.C. 553, the accommodation of the public comments in the judicial review of the rule-making exercise was intended wherever practicable. Agencies should furnish as complete an explanation of the routine uses and any changes made or not made as a result of the public comment as possible so that the public will be fully informed of the proposed use. This is to give the public an opportunity to comment on the appropriateness of those uses before they come into effect. This notice should be published sufficiently in advance of the proposed effective date of the use to permit time for the public to comment and for the agency to review those comments, but in no case may a new "routine use" be used as the basis for a disclosure less than 30 days after the publication of the "routine use" notice in the Federal Register. A revised public notice (subsection (e)(4)) must be published before a "routine use" is put into effect; i.e., before a record is disclosed for such a use.

It is clearly permissible to publish the entire system notice (prescribed by subsection (e)(4)) as the notice of "routine use" provided that such "routine uses" are not put into effect until the required 30 day notice period. If an entire system notice is not published, the notice of "routine use" issued pursuant to subsection (e)(11) must, as a minimum, contain

The name of the system of records for which the "routine use" is to be established;

Where feasible, the authority for the system (see discussion of subsection (e)(1), and the required notice to the individual in subsection (e)(3)(A)), above);

The categories of records maintained;

The proposed "routine use(s)";

And the categories of recipients for each proposed "routine use".

For new "routine uses" of systems for which a public notice under subsection (e)(4) has already been published, reference should be made to that public notice.

A notice in the Federal Register inviting public comment on a proposed new "routine use" is required.

For all existing systems of records not later than August 28, 1975. (Since 30 days advance notice of a "routine use" is required, an agency that fails to publish necessary notices for existing systems on or prior to August 28 may find that it is precluded from making necessary interagency transfers until it has complied with this provision);

For an existing system of records, whenever a new "routine use" is proposed. A new "routine use" is one which involves disclosure of records for a new purpose compatible with the purpose for which the record is maintained or to a new recipient or category of recipients (even if other uses are concurrently curtailed); and

For any new systems of records for which "routine uses" are contemplated.

## Section (f) Agency Rules

Subsection (f) "In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall—"

Agencies must promulgate rules to implement the provisions of the Act in accordance with the requirements of section 553 of Title 5 of the United States Code including publication of the rules in the Federal Register so that interested persons can have an opportunity to comment. A "rule" is defined as "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedures, or practice requirements of agency * * *" (5 U.S.C. 551(4)). Formal hearings are not required with respect to rules issued under this section. However, formal hearings are not precluded by this section and, in particular instances, agencies may elect to use the formal hearing procedure.

Two distinct objectives must be satisfied by the rules promulgated pursuant to this subsection:

They must provide the public with sufficient information to understand how an agency is complying with the law; and

They must provide sufficient information for individuals to exercise their rights under the Act.

Rules promulgated under this subsection differ from notices under subsection (e) in several ways:

Rules promulgated under this subsection are subject to requirements of section 553 of the Administrative Procedure Act governing the publication of proposed rules for public comment before issuing them as final rules.

Rules must only be published twice—as notice of rule making and when they are promulgated as final rules—unless they are subsequently modified. (They will, however, be included in an annual compilation published by GSA.)

A separate set of rules need not be published for each system of records that an agency maintains. The development of a single set of agency rules is encouraged wherever appropriate.

Agencies are required to publish proposed rules under this subsection allowing at least 30 days for public comment prior to publishing them as final rules. (For systems which will be in use on September 27, 1975, agencies will have to publish rules not later than August 28, 1975.) No further republication of agency rules is required (other than their inclusion in the annual compilation published by the office of the Federal Register) unless a change is proposed.

The language of subsection (f) explicitly requires "general notice;" i.e., section 553(b) of Title 5 which permits agencies not to publish a general notice if "persons subject thereto are named and either personally served or otherwise have actual notice * * *," shall not apply to rules promulgated under this subsection. Agencies should also be aware of the fact that, although the presumption is of the validity of the proposed rule, judicial review under the Administrative Procedure Act will be available to assure against arbitrary or capricious actions.

*Rules for Determining if an Individual is the Subject of a Record.* Subsection (f)(1) "Establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;"

The procedures for individuals to determine if a system of records contains records pertaining to them should be kept as simple as possible. The published procedures should specify—

To whom the request should be directed. As discussed above (subsection (e)(4)), for geographically decentralized systems, the individual should not be required to query each location unless the individual can reasonably be expected to be able to discern which location would have a record if one existed; e.g., by place of birth, place of employment. While the development of central indexes to satisfy the requirements of this provision is discouraged, such indexes may be necessary in some instances.

The information necessary to identify the record. Where the system employs a specialized identification scheme, the individual should not be required to provide such a number or symbol as an absolute requirement, although the individual might be requested to supply it if he or she can reasonably be expected to know it. Instead, alternative combinations of personal characteristics may be used to identify individuals who may have lost, forgotten, or are unaware of their identification numbers or symbols. For example, the combination of name, date of birth, place of birth, and father's first name may be sufficient to identify an individual without the use of a system identification number. As was suggested above, the development of new retrieval and indexing capabilities is not encouraged, rather agencies should exploit existing capabilities to serve individual needs. Restrictions on the use of the Social Security Number as an identifier established by Section 7 of this Act should also be noted where applicable.

Any requirements for verification of identity. These may only be imposed when the fact of the existence of a record would not be required to be disclosed under the Freedom of Information Act (5 U.S.C. 552).

Agency procedures should provide for acknowledgement of the inquiry within 10 days (excluding Saturdays, Sundays, and legal public holidays).

*Rules for Handling Requests for Access.* Subsection (f)(2) "Define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual;"

The development of procedures for individuals to identify themselves for the purposes of gaining access to their records will necessarily vary depending on the nature, location, and sensitivity of the records in the system. Care must be exercised to assure that the requirements for verification of identity are not so cumbersome as to prevent individuals from gaining access to records to which they are entitled to have access. The requirements pertaining to verification of identity contained in subsection (f)(1), above, should also be noted.

"Reasonableness" will be measured in terms of

The risk of access being granted to an individual who is not entitled to access weighed against the probable harm (including embarrassment) to the individual to whom the record pertains which would result from unauthorized access; and

The standards for verification of identity which a typical individual about whom record is maintained could be expected to meet.

When agencies specify that individuals may (or must) present themselves in person to verify their identity, hours and locations specified should take into account the kinds of individuals about whom records are maintained. For example, it may be appropriate to ask a current employee who seeks access to his record to present himself to the agency personnel office during normal working hours. No requirements may be established which would have the effect of impeding an individual in exercising his or her right to access.

Agencies which maintain systems of records on widely dispersed groups of individuals and which have field offices equipped to do so, are encouraged to use those offices as sites at which an individual can present a request for access even though his or her records may not be maintained at any one of those field offices. The information necessary to identify individuals should be kept to the absolute minimum and neither this provision nor any other provision of the Act should be used for the purpose of acquiring and storing additional information about an individual.

The published rules prescribing procedures for verification of identity will include—

A list of the locations and/or mailing addresses of locations to which the request may be presented;

When in-person verification is required or permitted, the hours when those locations are open (including the dates of holidays on which they are closed); and

Documents which the agency will require, if any, to establish the identity of the individual (specifying as many alternatives as possible).

*Rules for Granting Access to Records.* Subsection (f)(3) "Establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure (sic), if deemed necessary, for the disclosure to an individual of medical records including psychological records, pertaining to him;

Individuals may be granted access to their records either in person or by having copies mailed to them. The nature of the system and of the individuals on whom records are maintained will determine which method is appropriate. If an agency determines that it can grant access to records only by providing a copy of the record through the mail because it cannot provide "reasonable" means for individuals to have access to their records in person, it may not charge a fee for making the copy.

The issue of access to medical records was the subject of extensive discussion during the development of the Act. As

written, the Act provides that individuals have an unqualified right of access to records pertaining to them (with certain exceptions specified in subsections (j) and (k), below) but that the process by which individuals are granted access to medical records may, at the discretion of the agency, be modified to prevent harm to the individual. [See subsection (d)(1).]

As a minimum, rules issued pursuant to this subsection shall be consistent with the requirements of subsection (d)(1) and should include—

Some indication, for requests presented in person, as to whether the individual can expect to be granted immediate access to the record and, for written request, the expected time lag, if any, between receipt of a request for access and the granting of that access (see subsection (d)(2) for guidance on maximum response times); and

The locations at which individuals will be granted access to their records or the fact that access will be granted by providing copies by mail;

Notice that an individual when reviewing a record in person, may be accompanied by another individual of his or her choosing and the agency's requirements, if any, for a written statement authorizing that individual's presence. Such authorization statements, if employed, should be as brief as possible.

*Rules for Amending Records.* Subsection (f)(4) "Establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section;"

Agency procedures for permitting an individual to request amendment of a record shall be consistent with subsections (d)(2) and (3) and shall as a minimum, specify—

The official(s) to whom the request is to be directed;

The identifying information required to relate the request to the appropriate record;

The official(s) to whom a request for a review of an initial adverse determination on request to amend may be taken; and

Offices/officials from whom assistance can be obtained in preparing a request to amend a record or to appeal an initial adverse determination or to learn further of the provisions for judicial review.

If the agency deems it appropriate to establish (or already has) a formal reviewing mechanism for assessing the accuracy of its records or for reconciling disputes, that mechanism or board should be described in its rules published pursuant to this subsection. This provision does not require the establishment of new, separate review mechanisms where such capabilities exist and are, or can be modified to be, in conformance with this Act.

*Rules Regarding Fees.* Subsection (f)(5) "Establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record."

Fees may be charged to an individual under this section only for the making of copies of records when requested by the individual. As stated above (subsection (f)(3)), when copies are made by the agency incident to granting access to a record, a fee may not be charged. (It should be noted that the provisions on fees charged to an individual under this Act differ from those governing fees charged to the public. See 5 U.S.C. 552, as amended, the Freedom of Information Act, for guidance on fees for copies of records made available to the public.)

"[An]agency may not charge the individual for time spent searching for requested records or for time spent in reviewing records to determine if they fall within the disclosure requirements of the Act." (House Report 93-1416, p. 17.) When an individual requests a copy of a record, pursuant to subsection (d)(1) (access to records), the fee charged may not exceed the direct cost of making the copy (printing, typing, or photocopying and related personnel and equipment costs) and may not include any cost of retrieving the information. In establishing fee schedules, agencies should also consider the cost of collecting the fee in determining when fees are appropriate.

*Annual Publication of Notices and Rules.* Subsection (f) (final paragraph—unnumbered) "The Office of the Federal Register shall annually compile and publish the rules promulgated under this section and agency notices published under section (e)(4) of this section in a form available to the public at low cost."

The annual compilation of public notices (subsection (e)(4) and agency rules (subsection (f)(1) through (5)) will be produced in a form which promotes the exercise of individual rights under this Act.

The General Services Administration will issue guidance on the format and timing for submission of rules and notices to reduce the cost of preparing and publishing the rules and notices, to minimize redundancy wherever possible, and otherwise to enhance the utility of these publications. For example, the various provisions of subsection (e)(4) and (f)(1) through (4) calling for lists of names and addresses need not be treated as separate portions of the annual notice for each system.

## Subsection (g) Civil Remedies

This subsection prescribes the circumstances under which an individual may seek court relief in the event that a Federal agency violates any requirement of the Privacy Act or any rule or regulation promulgated thereunder, the basis for judicial intervention, and the remedies which the courts may prescribe. It should be noted that an individual may have grounds for action under other provisions of the law in addition to those provided in this section. For example—

An individual may seek judicial review under other provisions of the Administrative Procedure Act (APA).

An individual may file a complaint alleging possible criminal misconduct under section (i), below.

A Federal employee may file a grievance under personnel procedures. It should also be noted that an agency/employee responsible for an adverse action against an individual may be personally subject to civil suit, particularly where the agency/employee acted in a manner that was intentional or willful.

Judgments, costs, and attorney's fees assessed against the United States under this subsection would appear to be payable from the public funds rather than agency funds. 28 U.S.C. 2414 and 31 U.S.C. 724a (Payment of Judgments); 28 U.S.C. 1924 (Costs). While it is not the purpose of these guidelines to discuss the jurisdiction of the district courts or the procedures in such cases, it should be noted that most cases arising under subsection (g) will be handled by the General Litigation Section of the Civil Division of the Department of Justice. In these cases, upon receipt of a copy of the summons and complaint served upon the Attorney General and notification of its filing by the United States Attorney (see Rule 4, Federal Rules of Civil Procedure), the General Litigation Section will request the agency to furnish a litigation report.

Some agencies are authorized to conduct their own litigation. Where its authority permits, the agency may decide to handle its own cases under this Act. In view of the general litigation responsibility which the Department of Justice has for all other departments and agencies in the executive branch, it is important that agencies handling their own litigation under this Act keep the Department of Justice currently informed of their progress, and forward to the Civil Division copies of significant documents which are filed in such cases.

Each agency should maintain a complete and careful record of the administrative procedures followed in processing this statute. The record should be maintained so that it can be readily certified as the complete administrative record of the proceedings as a basis for possible use in litigation.

*Grounds for Action.* Subsection (g)(1) "Civil Remedies. Whenever any agency"

The subsection authorizing civil actions by individuals is designed to assure that an individual who (1) was unsuccessful in an attempt to have an agency amend his or her record; (2) was improperly denied access to his or her record or to information about him or her in a record; (3) was adversely affected by an agency action based upon an improperly constituted record; or (4) was otherwise injured by an agency action in violation of the Act will have a remedy in the Federal District courts.

*Refusal to Amend a Record.* Subsection (g)(1)(A) "Makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;"

An individual may seek judicial review of an agency's determination not to amend a record pursuant to a request filed under subsection (d)(2) under either one of two conditions—

The individual has exhausted his or her recourse under the procedures established by the agency pursuant to subsection (d)(3) (appeals on the agency's refusal to amend) and the reviewing official has also refused to amend the record, or

The individual contends that the agency has not considered the request to review in a timely manner or otherwise has not acted in a manner consistent with the requirements of subsection (d)(3). Such an action could presumably involve a challenge either to the agency's procedures published under subsection (f)(4) or to the agency head's decision to extend the period of review "for good cause shown" under subsection (d)(3).

An individual may also bring a civil action based on allegedly inaccurate records if it can be shown that a decision adverse to the individual resulted from that inaccuracy. See subsection (g)(1)(C). However, no test of injury is required to bring an action under subsection (g)(1)(A).

The basis for judicial review and the available remedies in actions brought under this subsection are found in subsection (g)(2).

*Denial of Access to a Record.* Subsection (g)(1)(B) "Refuses to comply with an individual request under subsection (d)(1) of this section;"

Under this subsection, individuals may challenge a decision to deny them access to records to which they consider themselves entitled (under subsection (d)(1)). The action giving rise to the suit may be the agency head's determination (pursuant to subsection (k), specific exemptions) to exempt a system of records from the requirements that individuals be granted access. "Since access to a file is the key to insuring the citizen's right of accuracy, completeness, and relevancy, a denial of access affords the citizen the right to raise these issues in court. This would be the means by which a citizen could challenge any exemption from the requirements of [the Act]." (Senate Report 93-1183, p. 82). It should be noted that systems of records covered under subsection (j) (general exemptions) are permitted to be exempted from this provision.

This provision is also the one by which individuals may contest an agency's refusal to grant access as a result of its interpretation of the definitions in the Act as they apply to information maintained by an agency and for the exclusion set forth in subsection (d)(5), denial of access to records compiled in reasonable anticipation of litigation. No test of injury is required to bring action under subsection (g)(1)(B). The basis for judicial review and available remedies are found in subsection (g)(3).

*Failure to Maintain a Record Accurately.* Subsection (g)(1)(C) "Fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determinatin relating to the qualifications, character, rights, or opportunities, of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual;" or

An individual may bring an action under this subsection only if it can be shown that the deficiency in the record resulted in an adverse determination by the agency which maintained the record, on the basis of the record. "An action also lies if the agency makes an adverse determination based upon a record which is inaccurate, untimely, or incomplete. However, in order to sustain such action, the individual must demonstrate the causal relationship between the adverse determination and the incompleteness, inaccuracy, irrelevance or untimeliness of the record." (House Report 93-1416, p. 17)

An adverse action is one resulting in the denial of a right, benefit, entitlement, or employment by an agency which the individual could reasonably have been expected to have been given if the record had not been deficient. This provision, in essence, allows an individual to test the agency's compliance with subsection (e)(5).

It should also be noted that, under this subsection, an agency may be liable as a consequence of its failure to maintain a record accurately only if it is shown that its failure has been "intentional or willful" (subsection (g)(4)). (No such test is required under the provisions of subsection (g)(1)(A), above, under which an individual can seek a review of the accuracy of a record.)

Neither this subsection nor subsection (g)(1)(A) was intended to permit an individual collaterally to attack information in records pertaining to him which has already been the subject of or for which adequate judicial review is available. For example, these provisions were not designed to afford an individual an alternate forum in which he can challenge the basis for a criminal conviction or an asserted tax deficiency.

The basis for judicial review and available remedies are found in subsection (g)(4).

*Other Failures to Comply with the Act.* Subsection (g)(1)(D) "Fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

In addition to the grounds specified in subsections (g)(1)(A) through (C) above, an individual may bring an action for any other alleged failure by an agency to comply with the requirements of the Act or failure to comply with any rule published by the agency to implement the Act (subsection (f)) provided it can be shown that—

The action was "intentional or willful";

The agency's action had an "adverse effect" upon the individual; and

The "adverse effect" was causally related to the agency's actions.

The basis for judicial review and available remedies provided by this Act are found in subsection (g)(4).

*Basis for Judicial Review and Remedies for Refusal to Amend a Record.* Subsection (g)(2) "(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

"(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed."

When an individual seeks judicial review of the accuracy, timeliness, completeness, or relevance of a record either as a result of a challenge to the agency's refusal to amend a record or because the individual alleges that the agency's process for review does not conform to subsection (d)(3), the court is required to review the matter as if it were an initial determination (de novo). Such a review may extend to the agency's criteria established in conformance with subsections (e)(1) and (5) for "accuracy, relevance, timeliness, and completeness" as they relate to the purposes for which the agency maintains the record.

Unlike the judicial review of a denial of access to a record, in a review of refusal to amend a record the burden to justify its action is not expressly placed upon the agency by the Privacy Act. This was intended to result in placing the burden of challenging the accuracy of the record upon the individual. As a result, agencies should not maintain additional records solely for the purpose of validating the accuracy, timeliness, and completeness or relevance of other records they maintain.

If the court finds for the individual against the agency it may

Direct the agency to amend the record or to take such other steps as it deems appropriate.

Require the agency to pay court costs and attorney fees. "It is intended that such award of fees not be automatic, but rather, that the courts consider the criteria as delineated in the existing body of law governing the award of fees." (House Report 93-1416, p. 17)

*Basis for Judicial Review and Remedies for Denial of Access.* Subsection (g)(3)"(A) In any suit brought under the provision (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

In conducting its review,

*"[T]he court is required to determine such matters de novo and the burden of proof is upon the agency to sustain the exemption." (House Report 93-1416, p. 17) In view of the sensitivity of some of the records to which access may be sought, the court, in examining those records may do so in camera. "A person seeking access to a file which he has reason to believe is being maintained on him for the purposes of determining its accuracy and completeness, for example, or to take advantage of the rights afforded him * * * could raise the question of the propriety of the exemption which denies him access to his files. In deciding whether the citizen has a right to see his file or to learn whether the agency has a file on him, the court would of necessity have to decide the legitimacy of the agency's reasons for the denial of access, or refusal of an answer. The Committee intends that any citizen who is denied a right of access under the Act may have a cause of action, without the necessity of having to show that a decision has been made on the basis of it, and without having to show some further injury, such as loss of job or other benefit, that might*

stem from the denial of access." (Senate Report 93-1183, p. 82.)

If the court finds for the individual against the agency, it may—

Direct the agency to grant the individual access as provided under subsection (d)(1), above.

Require the agency to pay court costs and attorney fees. "It is intended that such award of fees not be automatic, but rather, that the courts consider the criteria as delineated in the existing body of law governing the award of fees." (House Report 93-1416, p. 17)

*Basis for Judicial Review and Remedies for Adverse Determination and Other Failures to Comply.* Subsection (g)(4) "In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—

"(A) Actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

"(B) The costs of the action together with reasonable attorney fees as determined by the court."

In any action brought for failure to comply with the provisions of the Act, other than those covered in subsection (g)(1)(A) and (B) (refusal to amend a record or denial of access) it must be shown that—

The failure of the agency to comply was "intentional or willful;"

There was injury or harm to the individual; and

The injury was causally related to the alleged agency failure.

As indicated above, these criteria do not apply to suits brought to amend a record pursuant to subsection (g)(1)(A) so that an individual may, under certain circumstances, properly bring an action either under subsections (g)(1)(A) or (g)(1)(C).

When the court finds that an agency has acted willfully or intentionally in violation of the Act in such a manner as to have an adverse effect upon the individual, the United States will be required to pay

Actual damages or $1,000, whichever is greater

Court costs and attorney fees.

Unlike subsections (g)(2) and (3) above, which make the award of court costs and attorney fees discretionary in successful suits brought under subsections (g)(1)(A) and (B), such awards are required to be made in actions in which the individual has prevailed under subsections (g)(1)(C) and (D). See House Report 93-1416, pp. 17-18 and the *Congressional Record*, December 18, 1974, P.H. 122445 for further discussion of this point.

*Jurisdiction and Time Limits.* Subsection (g)(5) "An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to the effective date of this section."

Action may be brought in the district court for the jurisdiction in which the individual resides, or has a place of business, or in which the agency records are situated, or in the District of Columbia.

"The statute of limitations is two years from the date upon which the cause of action arises, except for cases in which the agency has materially or willfully misrepresented any information required to be disclosed and when such misrepresentation is material to the liability of the agency. In such cases the statute of limitations is two years from the date of discovery by the individual of the misrepresentation." (House Report 93-1416, p. 18)

A suit may not be brought on the basis of injury which may have occurred as a result of an agency's disclosure of a record prior to September 27, 1975; e.g., disclosure without the consent of the individual or an adverse action resulting from a disclosure. This language is intended to preclude agencies from being held liable, under this law, for actions taken prior to its effective date.

## Subsection (h) Rights of Legal Guardians

Subsection (h) "For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual."

This section is intended to ensure that minors or individuals who have been declared to be legally incompetent have a means of exercising their rights under the Act. It also has the effect of making individuals acting in loco parentis to minors, parents, legal guardians, and custodians the same as the individual for purposes of giving consent for disclosure (subsection (b)) and being informed of the purposes for which records are maintained (subsection (e)(3)).

It should be noted that this provision is discretionary and that individuals who are minors are authorized to exercise the rights given to them by the Privacy Act or, in the alternative, their parents or those acting in loco parentis may exercise them in their behalf.

## (i) Criminal Penalties

This subsectin establishes criminal sanctions for three possible violations

Unauthorized disclosure.

Failure to publish a public notice for a system of records subject to the Act.

Obtaining access to records under false pretenses.

The first two are directed at actions of officers and employees of Federal agencies and (pursuant to subsection (m)) certain contractor personnel. Agencies should ensure that all personnel are informed of the requirements of the Act and, pursuant to subsection (e)(9), rules of conduct, are given periodic training in this area.

*Criminal Penalties for Unauthorized Disclosure.* Subsection (i)(1) "Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000."

It is a criminal violation of the provisions of the Act if an employee, knowing that disclosure is prohibited, willfully discloses a record without the written consent of the individual to whom it pertains, at his or her request, or for one of the reasons set forth in subsections (b)(1) through (11), conditions of disclosure.

*Criminal Penalties for Failure To Publish a Public Notice.* Subsection (i)(2) "Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than $5,000."

As was discussed in connection with subsection (e)(4), above, a basic objective of the Act is to assure that there is no system of records whose very existence is kept secret. An agency is required to publish a public notice about each system of records which it maintains. It is a criminal violation of the Act willfully to maintain a system of records and not to publish the prescribed public notice. The exemption provisions, subsections (j) and (k), do not allow an agency head to exempt any system of records from the requirement to publish a public notice of its existence, although that notice may be somewhat abbreviated. (See subsections (a)(5), definitions, and (e)(4), public notice, for guidelines on what constitutes a system.) It should be noted that, under agency procedures, the officer or employee who maintains the system may not be the one who is responsible for publishing the notice. Agency procedures should make the responsibilities of each clear. The officer or employee who maintains the system has an obligation to notify the one responsible for publishing the notice. Similarly the officer or employee responsible for publishing the notice, once notified of the existence of a system, must make that fact public.

*Criminal Penalties for Obtaining Records under False Pretenses.* Subsection (i)(3) "Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000."

This provision makes it a criminal act knowingly and willfully to request or gain access to a record about an individual under false pretenses. It is likely that the principal application of this provirion will be to deter individuals from

making fraudulent requests under subsection (d)(1), access to records.

## Subsections (j) and (k) Exemptions

The drafters of the Act recognized that the application of all of the requirements of the Act to certain categories of records would have had undesirable and often unacceptable effects upon agencies in the conduct of necessary public business.

Two categories of exemptions are established: General exemptions (subsection (j)) and specific exemptions (subsection (k)). The principal difference between the two categories is that systems of records exempted under subsection (j) may be exempted from more provisions of the Act than those exempted under subsection (k). Exemptions under subsection (j) may be exempted from the civil remedies provision and, in particular, the judicial review under subsections (g)(1)(B) and (g)(3), civil remedies.

In applying any of the exemption provisions of the Act, it is important to recognize the following:

No system of records is automatically exempt from any provision of the Act. To obtain an exemption for a system from any requirement of the Act, the head of the agency that maintains the system must make a determination that the system falls within one of the categories of systems which are permitted to be exempted, and publish the determination as a rule in accordance with the requirements (including general notice) of section 553 of the Administrative Procedure Act. That notice must include the specific provisions from which the system is proposed to be exempted and why the agency considers the exemption necessary.

The requirement to publish a public notice (subsection (e)(4), above) applies to all systems of records maintained by an agency. Certain other provisions such as conditions of disclosure (b), accounting for disclosures ((c)(1) and (2)) and restrictions on maintaining records on First Amendment activities ((e)(7)) also apply to all systems of records. Agencies may not exempt any system, as defined in subsection (a)(5) from any of these requirements.

In some instances, systems may contain records which are subject to exemption under more than one subsection in subsections (j) or (k). In those cases the notices claiming exemption should, if possible, specify which types of records are subject to which exemption.

Agency records which are part of an exempted system may be disseminated to other agencies and incorporated into their non-exempt records systems. The public policy which dictates the need for exempting records from some of the provisions of the Act is based on the need to protect the contents of the records in the system—not the location of the records. Consequently, in responding to a request for access where documents of another agency are involved, the agency receiving the request should consult the originating agency to determine if the records in question have been exempted from particular provisions of the Act. A copy of the request may be forwarded to the originating agency for handling of its documents where such a procedure would result in a more rapid response to the request for access but the agency receiving the request remains responsible for assuring a prompt response.

Agencies which elect to invoke exemptions are encouraged to adopt procedures similar to those prescribed by the Act wherever appropriate. For example, it may be appropriate to seek an exemption from the access provision ((d)(1)) for certain prisoner records because they contain court controlled pre-sentence reports, but a more limited access procedure may be appropriate.

## Subsection (j)—General Exemptions—Applicability and Notice Requirements

Subsection (j) "The head of any agency may promulgate rules, in accordance with the requirements (including general notice), of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is—

"(1) * * *

"(2) * * *

"At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section."

This section permits agency heads to exempt systems of records which are maintained by the Central Intelligence Agency or for criminal law enforcement purposes, as further discussed in subsections (j)(1) and (2), below, from all provisions of the Act except the—

Conditions of disclosure, ((b));

Accounting for disclosures and retention of the accounting, ((c)(1) and (2));

Annual public notice except for procedures for identifying a record, gaining access to it, contesting its accuracy, and identifying the sources of records, ((e)(4)(A) through (F));

Obligations to check the accuracy, relevance, timeliness, and completeness of records before disclosing them to a person other than another agency or to the public under the Freedom of Information Act, ((e)(6));

Restrictions on maintaining records on First Amendment activities, ((e)(7));

Establishment of rules of conduct and administrative, technical and physical safeguards, ((e)(9) and (10), respectively);

Publication of "routine use" notices ((e)(11)); and

Criminal penalties, ((i)).

When the head of an agency determines that a system of records maintained by the agency should be exempted from certain provisions of the Act, a notice must be published in the Federal Register which specifies, as a minimum:

The name of the system (This should be the same as that given in the annual public notice under subsectin (e)(4)); and

The specific provisions of the Act from which the system is to be exempted and the reasons therefor. A separate reason need not be stated for each provision from which the system is being exempted, where a single explanation will serve to explain the entire exemption.

The agency head's determination is considered to be a rule under the Administrative Procedure Act (APA) and is subject to the requirements of general notice and public comment of that Act, 5 U.S.C. 553. While general notice of a proposed rule is not required under the APA when "persons subject thereto are named and either personally served or otherwise have actual notice thereof * * *;" the use of the phrase "including general notice" means that individual notifications will not suffice.

The systems of records and the number of records (i.e., individuals) in each, which were exempted from any of the provisions of the Act under this subsection will be required to be included in the annual report prepared as required by subsection (p). It should be emphasized that the exemption provisions are permissive; i.e., an agency head is authorized, but not required, to exempt a system from all or any portion of selected provisions of the Act when he or she deems it to be in the best interest of the government and consistent with the Act and these guidelines. In commenting on this provision, the House Committee noted:

> The Committee also wishes to stress that this section is not intended to require the C.I.A. and criminal justice agencies to withhold all their personal records from the individuals to whom they pertain. We urge those agencies to keep open whatever files are presently open and to make available in the future whatever files can be made available without clearly infringing on the ability of the agencies to fulfill their missions. (House Report 93-1416, p. 19)

To the extent practicable, records permitted to be exempted from the Act should be separated from those which are not. Further, while the language permits agency heads to exempt systems of records, agencies should exempt only portions of systems wherever it is possible.

*General Exemption for the Central Intelligence Agency.* Subsection (j)(1) "Maintained by the Central Intelligence Agency; or"

*General Exemptions for Criminal Law Enforcement Records.* Subsection (j)(2) "Maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision."

## Subsection (k) Specific Exemptions

*Applicability and Notice Requirements.* Subsection (k) "The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is—"

"(1) * * *

* * * * *

"(7) * * *

"At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section."

This subsection permits agency heads to exempt systems of records from a limited number of provisions of the Act. In addition to the provisions from which no system may be exempted under subsection (j), a system which falls under any one of the seven categories listed in this subsection may not be exempted from the following provisions:

Informing prior recipients of corrected or disputed records, ((c)(4));

Collecting information to be used in determinations about an individual directly from the individual to whom it pertains, ((e)(2));

Informing individuals asked to supply information of the authority by and purposes for which it is collected and whether or not providing the information is mandatory, ((e)(3));

Maintaining records with such accuracy, completeness, timeliness, and relevance as is reasonable for the agency's purposes, ((e)(5));

Notifying the subjects of records disclosed under compulsory process, ((e)(8)); and

Civil remedies, (g).

As with subsection (j), upon determining that a system is to be exempted under this section, the agency head is required to publish that determination as a rule under the Administrative Procedure Act subject to public comment. That notice must, as a minimum, specify

The name of the system (as in the annual notice under subsection (e)(4)); and

The specific provisions of the Act from which the system is to be exempted and the reason therefor.

The agency head's determination is considered to be a rule under the administrative Procedure Act (APA) and is subject to the requirements of general notice and public comment of that Act, 5 U.S.C. 553. While general notice of a proposed rule is not required under the APA when "persons subject thereto are named and either personally served or otherwise have actual notice thereof * * *", the language "including general notice" means that individual notification will not suffice.

In addition, the systems of records and the number of records in each, which were exempted from any of the provisions of the Act under this section will be required to be included in the annual report required by subsection (p).

It should also be noted that the exemption provisions are permissive; i.e., an agency head is authorized, but not required, to exempt a system when he or she deems it to be in the best interest of the government and consistent with the Act and these guidelines. "Also as with section (j) records, the Committee urges agencies maintaining section (k) records to open those documents to the individuals named in them insofar as such action would not impair the proper functioning of those agencies." (House Report 93-1416, p. 20)

In the process of utilizing any of these exemptions, agencies should, wherever practicable, segregate those portions of systems for which an exemption is considered necessary so as to hold to the minimum the amount of material which is exempted. While the language permits agency heads to exempt entire systems of records, the language of certain of the specific provisions below suggests that it may, in some instances, be appropriate to exempt only portions of systems where it is not possible to segregate entire systems. For example, records containing classified material to which access may be denied under (k)(1) should be screened to permit access to unclassified material, and only these portions of investigative material which meet all of the criteria in (k)(2) or (5) should be withheld. However, in the case of records which are permitted to be exempted to the extent that their disclosure would reveal the identity of a confidential source, extreme care should be exercised to ensure that the content of any records being segregated does not disclose the identity of the source.

*Exemption for Classified Material.* Subsection (k)(1) "Subject to the provisions of section 552(b)(1) of this title;"

This subsection permits agency heads to exempt, from certain provisions of the Act, those systems of records which are "(A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order." (5 U.S.C. 552(b)(1), as amended by Public Law 93-502)

The Freedom of Information Act, as amended by P.L. 93-502, authorizes de novo judicial review of an agency's decision to classify a document, including in camera examination of the document when the court deems it necessary to resolve a dispute as to whether a document is properly being withheld under the provisions of subsection (b)(1) of the Freedom of Information Act. See the Conference Report on H.R. 12471, House Report 93-1380, pp 8-9.

Useful guidance in the application of this provision is found in the Senate Committee report discussion of a similar provision on classified materials:

> The potential for serious damage to the national defense or foreign policy could arise if the notice describing any information system included categories or sources of information * * * or provided individuals access to files maintained about them * * *
>
> The Committee does not by this legislation intend to jeopardize the collection of intelligence information related to national defense or foreign policy, or open to inspection information classified pursuant to Executive Order 11652 to persons who do not have an appropriate security clearance or need to know.
>
> This section is not intended to provide a blanket exemption to all information systems or files maintained by an agency which deal with national defense and foreign policy information. Many personnel files and other systems may not be subject to security classification or may not cause damage to the national defense or foreign policy simply by permitting the subjects of such files to inspect them and seek changes in their contents under this Act. (Senate Report 93-1183, p. 74)

*Exemption for Investigatory Material Compiled for Law Enforcement Purposes.* Subsection (k)(2) "Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section; *Provided, however,* That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

This provision allows agency heads to exempt a system of records compiled in the course of an investigation of an alleged or suspected violation of civil laws, including violations of the Uniform Code of Military Justice and associated regulations, except to the extent that the system is more broadly exempt under the provision covering records maintained by an agency whose principal function pertains to the enforcement of criminal laws (subsection (j)(2)). This exemption was drafted because "[i]ndividual access to certain law enforcement files could impair investigations, particularly those which involve complex and continuing patterns of behavior. It would alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution." (House Report 93-11416, p. 19.)

The phrase "investigatory material compiled for law enforcement purposes" is the sample phrase as opened exemption (b)(7) to the Freedom of Information Act prior to its recent amendment (Public Law 93-502), with the exception of the use of the word "material" in the Privacy Act for the word "files" in the now amended Freedom of Information Act exemption. The intent was to have the same meaning given to this phrase in the Privacy Act as had been given to it in the Freedom of Information Act except that the phrase would apply to material as opposed to entire files. The case law, then, which had interpreted "investigatory" and "compiled" and "law enforcement purposes" for the now amended portions of exemption (b)(7) of the Freedom of Information Act should be utilized in defining those terms as they appear in subsection (k)(2) of the Privacy Act.

It was further recognized that "due process" in both civil action and criminal prosecution will assure that individuals have a reasonable opportunity to learn of the existence of, and to challenge, investigatory records which are to be used in legal proceedings.

To the extent that such an investigatory record is used as

a basis for denying an individual any right, privilege, or benefit (including employment) to which the individual would be entitled in the absence of that record, the individual must be granted access to that record except to the extent that access would reveal the identity of a confidential source.

The language permitting an agency to withhold records used as a basis for denying a benefit to the extent that the record would reveal the identity of an individual who furnished information in confidence is very narrowly drawn and must be treated carefully (see also subsections (k)(5) and (7), below). For information collected on or subsequent to the effective date of this section (September 27, 1975) a record may only be withheld to protect the identity of a source if

An express guarantee was made to the source that his or her identity would not be revealed. (Such guarantees should be made on a selective basis; i.e., individuals from whom information is solicited for law enforcement purposes should be advised that their identity may be disclosed to the individual to whom the record pertains unless a source expressly requests that his or her identity not be revealed as a condition of furnishing the information.); and

The record, if stripped of the identity of the source would nonetheless by its content reveal the identity to the subject.

It was recognized that the type of investigatory record covered by subsection (k)(2) currently contains substantial information which was obtained with the tacit understanding that the identity of the source would not be revealed. For this reason the Act provides that information in such records that was collected prior to the effective date of the Act may be withheld from the individual to whom it pertains to the extent that it was collected under an implied promise that its source would not be revealed and disclosing it would reveal the identity of the source.

The phrase "to the extent that" is particularly important. As implied above, if a record can be disclosed in such a way as to conceal its source, a promise of confidentiality to the source is not sufficient grounds for withholding it. Obviously, the content of certain records is such that it reveals the identity of the source even if the name of the source or other identifying particulars are removed; e.g., the record contains information that could only have been furnished by one individual known to the subject. Only in those cases, may the substance of the record be withheld to protect the identity of a source and then only to the extent necessary to do so. It is recognized, however that it may in some instances be very difficult for an agency to know whether the content of a record would, in and of itself, reveal its source. Therefore, it may be appropriate in light of the intent underlying this exemption, to exempt a record when any reasonable doubt exists as to whether its disclosure would reveal the identity of a confidential source.

Additional guidance on the circumstances under which an agency may withhold a record on the grounds that its disclosure would reveal the identity of a source who provided information under a pledge of confidentiality is found in Senator Ervin's statement on the compromise bill on the floor of the Senate.

> The compromise provision for the maintenance of information received from confidential sources represents an acceptance of the House language after receiving an assurance that in no instance would that language deprive an individual from knowing of the existence of any information maintained in a record about him which was received from a "confidential source." The agencies would not be able to claim that disclosure of even a small part of a particular item would reveal the identity of a confidential source. The confidential information would have to be characterized in some general way. The fact of the item's existence and a general characterization of that item would have to be made known to the individual in every case.
>
> Furthermore, the acceptance of this section in no way precludes an individual from knowing the substance and source of confidential information, should that information be used to deny him a promotion in a government job or access to classified information or some other right, benefit or privilege for which he was entitled to bring legal action when the government wished to base any part of its legal case on that information.
>
> Finally, it is important to note that the House provision would require that all future promises of confidentiality to sources of information be expressed and not implied promises. Under the authority to prepare guidelines for the administration of this Act it is expected that the Office of Management and Budget will work closer with agencies to insure that Federal investigators make sparing use of the ability to make express promises of confidentiality. (Congressional Record, December 17, 1974, p. S21816)

The foregoing discussion with respect to confidentiality of sources is also applicable to the provisions of subsections (k)(5) and (7), below.

*Exemption for Records Maintained To Provide Protective Services.* Subsection (k)(3) "Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of Title 18;"

This exemption covers records which are not clearly within the scope of law enforcement records covered under subsection (k)(2) but which are necessary to assuring the safety of individuals protected pursuant to 18 U.S.C. 3056.

It was noted that "access to Secret Service intelligence files on certain individuals would vitiate a critical part of Secret Service work which was specifically recommended by the Warren Commission that investigated the assassination of President Kennedy and funded by Congress." (House Report 93-1416, p. 19)

*Exemption for Statistical Records.* Subsection (k)(4) "Required by statute to be maintained and used solely as statistical records;"

A "statistical record" is defined in subsection (a)(6) as "a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of Title 13."

It is the intent of this provision to permit exemptions for those systems of records which by operation of statute cannot be used to make a determination about an individual.

This provision permits an agency head to exempt a system of records which is used only for statistical, research, or program evaluation purposes, and which is not used to make decisions on the rights, benefits, or entitlements of individuals except as permitted by section 8 of Title 13. The use of the language "required by statute to be maintained * * * only" suggests that systems of records which qualify to be exempted under this provision are those composed exclusively of records that by statute are prohibited from being used for any purpose involving the making of a determination about the individual to whom they pertain; not merely that the agency does not engage in such uses.

> Disclosure of statistical records [to the individual] in most instances would not provide any benefit to anyone, for these records do not have a direct effect on any given individual; it would, however, interfere with a legitimate, Congressionally-sanctioned activity. (House Report 93-1416, p. 19)

*Exemption for Investigatory Material Compiled for Determining Suitability for Federal Employment or Military Service.* Subsection (k)(5) "Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;"

This provision permits an agency to exempt material from the individual access provision of the Act which would cause the identity of a confidential source to be revealed only if all of the following conditions are met:

The material is maintained only for purposes of determining an individual's qualifications, eligibility or suitability for military service, employment in the civilian service or on a Federal contract, or access to classified material. By implication, employment would include appointments to Federal advisory committees or to membership agencies, whether or not salaried;

The material is considered relevant and necessary to making a judicious determination as to qualifications, eligibility or suitability and could only be obtained by providing assurance to the source that his or her identity would not be revealed to the subject of the record; e.g., for "critical sensitive positions;" and

Disclosure of the record with the identity of the source removed would likely reveal the identity of the source; e.g., the record contains information which could only have been furnished by one of several individuals known to the subject. (Since information collected prior to the effective date of the Act may have been gathered under an implied promise of confidentiality, that pledge may be honored and those records exempted if the other criteria are met.)

See subsection (k)(2), above, for a more extensive discussion of the circumstances under which records may be withheld to protect the identity of a confidential source.

This language was included to take into account the fact that the screening of personnel to assure that only those who are properly qualified and trustworthy are placed in governmental positions will, from time to time, require information to be collected under a pledge of confidentiality. Such pledges will be limited only to the most compelling circumstances; i.e.,

Without the information thus obtained, unqualified or otherwise unsuitable individuals might be selected; or

The potential source would be unwilling to provide needed information without a guarantee that his or her identity will not be revealed to the subject; or

To be of value in the personnel screening and often highly competitive assessments in which it will be used, the information must be of such a degree of frankness that it can only be obtained under an express promise that the identity of its source will not be revealed.

The Civil Service Commission and the Department of Defense (for military personnel) will issue regulations establishing procedures for determining when a pledge of confidentiality is to be made and otherwise to implement this subsection. These regulations and any implementing procedures will not provide that all information collected on individuals being considered for any particular category of positions will automatically be collected under a guarantee that the identity of the source will not be revealed to the subject of the record.

This provision has been among the most misunderstood in the Act. It should be noted that it grants authority to exempt records only under very limited circumstances. "It will not be the customary thing to make these promises of confidentiality, so that most all of the information [in investigatory records] will be made available." (Congressional Record, November 20, 1974, p. 10887.)

The term "Federal contracts" covers investigatory material on individuals being considered for employment on an existing Federal contract as well as investigatory material compiled to evaluate the capabilities of firms being considered in a competitive procurement.

*Exemption for Testing or Examination Material.* Subsection (k)(6) "Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process;"

This provision permits an agency to exempt testing or examination material used to assess the qualifications of an individual for appointment or promotion in the military or civilian service only if disclosure of the record to the individual would reveal information about the testing process which would potentially give an individual an unfair competitive advantage. For example, the Civil Service Commission and the military departments give written examinations which cannot be revised in their entirety each time they are offered. Access to the examination questions and answers could give an individual an unfair advantage. This language also covers certain of the materials used in rating individual qualifications. This subsection permits the agency to withhold a record only to the extent that its disclosure would reveal test questions or answers or testing procedures.

It was not the intent of this subsection to permit exemptions of information which are required to be made available to employees or members or are, in fact, made available to them as a matter of current practice. The presence of exemption (k)(7) is an indication of the intended narrow coverage of the exemptions set forth in (k)(6) and, similarly, the exemptions of (k)(7) and (k)(6) indicate the intended narrow coverage of the exemption set forth in subsection (k)(5).

*Exemption for Material Used To Evaluate Potential for Promotion in the Armed Services.* Subsection (k)(7) "Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence."

The discussions of subsection (k)(2) and (5), above, should be reviewed in applying this provision. The same rationale regarding when and how the confidentiality of sources may be protected applies here.

The military departments will publish regulations specifying those categories of positions in the Armed Services for which pledges of confidentiality may be made when obtaining information on an individual's suitability for promotion. These categories will be narrowly drawn.

## Subsection (l) Archival Records

This subsection addresses the maintenance of those records which are transferred to the General Services Administration. It should be noted that there is a substantial difference between

Records which have been placed in records centers operated by the Administrator of General Services for "storage processing and servicing" pursuant to Section 3103 of Title 44; and

Records which are accepted by the Administrator of General Services "for deposit in the National Archives of the United States [because they] have sufficient historical or other value to warrant their continued preservation by the United States Government" pursuant to Section 2103 of Title 44.

The former, those for which the General Services Administration is essentially a custodian, are addressed in subsection (l)(1). The latter, archival records which have been transferred to the Archives and are maintained by the Archivist, are addressed in subsections (l)(2) and (l)(3).

*Records Stored in GSA Records Centers.* Subsection (l)(1) "Each agency record which is accepted by the Administrator of General Services for storage, processing, and servicing in accordance with section 3103 of Title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Administrator of General Services shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section."

Records which are sent to the General Services Administration for storage as a result of determination by the agency head that to do so would "effect substantial economies or increase operating efficiency," (44 U.S.C. 3103), are deemed to be part of the records of the agency which sent them and are subject to the Act to the same extent that they would be if maintained on the agency's premises.

This language, in effect, constitutes a clarification of the term "maintain" (subsection (a)(3)) with respect to records which have been physically transferred to GSA for storage. While records are stored in a records center, the agency which sent them to storage remains accountable for them and the General Services Administration effectively functions as an agent of that agency and maintains them pursuant to rules established by that agency.

Records stored in records centers often constitute the inactive portion of systems of records, the remainder of which are kept on agency premises; e.g., agency payroll and personnel records. Whenever practicable, these inactive records should be treated as part of the total system of records and be subject to the same rules and procedures. In no case may they be subject to rules which are inconsistent with the Privacy Act.

To assure the orderly and effective operation of the records center and consistent with its authority to issue regulations governing Federal agency records management policies (under Title 44 of the United States Code), the Privacy Act and these guidelines; the General Services Administration shall issue general guidelines to the agencies on preferred methods for handling systems of records stored in Federal records centers. In view of the intent underlying this provision, agencies may consider that the records stored in Federal records centers are transferred intra-agency and need not publish notice of "routine uses" to enable these transfers.

*Records Archived Prior to September 27, 1975.* Subsection (l)(2) "Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States Government as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register."

Records transferred to the Archives for "preservation" pursuant to 44 U.S.C. 2103, prior to September 27, 1975 are considered to be maintained by the Archives but are not subject to other provisions of the Act.

However, the National Archives is required to issue general notices describing its current holdings which cover, to the extent applicable, the elements specified in subsection (e)(4). These should include, as a minimum—

The categories of individuals on whom records are maintained;

The types of information in those records; and

Policies governing access and retrieval.

"It is intended that the notice provision not be applied separately and specifically to each of the many thousands of separate systems of records transferred to the Archives prior to the effective date of this Act but rather that a more general description be provided which pertains to meaningful groupings of record systems." (Congressional Record, December 18, 1974, p. H12245)

If, for any reason, a record currently in the Archives is disclosed to an agency for use by that agency in making a determination as to the rights, benefits, or entitlements of an individual, it becomes subject to the provisions of the Act to the same extent as any other record maintained by that agency.

*Records Archived On or After September 27, 1975.* Subsection (l)(3) "Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section."

Records transferred to the Archives pursuant to 44 U.S.C. 2103 (for "preservation") on or after September 27, 1975 are considered to be maintained by the Archives for purposes of the Act but are only subject to selected provisions of the Act. "[They] are subject only to those provisions of this Act requiring annual public notice of the existence and character of the information systems maintained by the Archives, establishment of appropriate safeguards to insure the security and integrity of preserved personal information, and promulgation and implementation of rules to insure the effective enforcement of those safeguards." (Congressional Record, December 18, 1974, p. H12245.)

The notice required for these records is on a system by system basis. "Since the records would already have been organized in conformity with the requirements of this section by the agency transferring them to the Archives, maintaining them in continued conformity with this law would not require any special effort." (House Report 93-1416, p. 20.)

The exclusion of archival records from the provisions of the Act establishing the right to have access or to amend a record was also discussed in the House Report:

> Records under the control of the Archives would not, however, be subject to the provisions of this law which permit changes in documents at the request of the individual named in them. A basic archival rule holds that archivists may not remove or amend information in any records placed in their custody. The principle of maintaining the integrity of records is considered one of the most important rules of professional conduct. It is important because historians quite properly want to learn the true condition of past government records when doing research; they frequently find the fact that a record was inaccurate is at least as important as the fact that a record was accurate.
>
> The Committee believes that this rule is eminently reasonable and should not be breached even in the case of individually identifiable records. Once those documents are given to the Archives, they are no longer used to make any determination about any individual, so amendment of them would not aid anyone. Furthermore, the Archives has no way of knowing the true state of contested information, since it does not administer the program for which the data was collected; it cannot make judgments as to whether records should be altered. (House Report 93-1416, p. 21).

The Archivist is required to establish rules of conduct for GSA personnel to assure that records in the Archives are used only in a manner consistent with 44 U.S.C. 2103 and that Archives personnel are properly instructed in the rules governing access to and use of archival records.

However, when a record which has been deposited in the Archives is disclosed to an agency and becomes part of any agency's records which could be used in making a determination about an individual, that record would again be subject to the other applicable provisions of the Act.

## Subsection (m) Government Contractors

Subsection (m) "When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency."

The extent to which the provisions of the Act would apply to records other than those physically maintained by Federal agency personnel was one of the principal areas of difference between the Senate and House privacy bills (S. 3418 and H.R. 16373).

The Senate bill would have extended its provisions outside the Federal government only to those contractors, grantees or participants in agreements with the Federal government, where the purpose of the contract, grant or agreement was to establish or alter an information system. It addressed a concern over the policy governing the sharing of Federal criminal history information with State and local government law enforcement agencies and for the amount of money which has been spent through the Law Enforcement Assistance Administration for the purchase of State and local government criminal information systems.

The compromise amendment would now permit Federal law enforcement agencies to determine to what extent their information systems would be covered by the Act and to what extent they will extend that coverage to those with which they share that information or resources.

At the same time it is recognized that many Federal agencies contract for the operation of systems of records on behalf of the agency in order to accomplish an agency function. It was provided therefore that such contracts if agreed to on or after the effective date of this legislation shall provide that those contractors and any employees of those contractors shall be considered to be employees of an agency and subject to the provisions of the legislation. (Congressional Record, Dec. 17, 1974, p. S21818)

It was also agreed that the Privacy Protection Study Commission should be directed to study the applicability of the provisions of the Privacy Act to the private sector and make recommendations to the Congress and the President (See subsection 5(b) of the Act).

The effect of this provision is to clarify, further, the definition of the term "maintain" as it establishes agency accountability for systems of records. (See subsection (a)(3)). It provides that systems operated under a contract which are designed to accomplish an agency function are, in effect, deemed to be maintained by the agency. It was not intended to cover private sector record keeping systems but to cover de facto as well as de jure Federal agency systems.

"Contract" covers any contract, written or oral, subject to the Federal Procurement Regulations (FPR's) or Armed Services Procurement Regulations (ASPR's), but only those which provide "* * * for the operation by or on behalf of the agency of a system of records to accomplish an agency function * * *" are subject to the requirements of the subsection. While the contract need not have as its sole purpose the operation of such a system, the contract would normally provide that the contractor operate such a system formally as a specific requirement of the contract. There may be some other instances when this provision will be applicable even though the contract does not expressly provide for the operation of a system; e.g., where the contract can be performed only by the operation of a system. The requirement that the contract provide for the operation of a system was intended to ease administration of this provision and to avoid covering a contractor's system used as a result of his management discretion. For example, it was not intended that the system of personnel records maintained by large defense contractors be subject to the provisions of the Act.

Not only must the terms of the contract provide for the operation (as opposed to design) of such a system, but the operation of the system must be to accomplish an agency function. This was intended to limit the scope of the coverage to those systems actually taking the place of a Federal system which, but for the contract, would have been performed by an agency and covered by the Privacy Act. Information pertaining to individuals may be maintained by an agency (according to subsection (e)(1)) only if such information is relevant and necessary to a purpose of the agency required to be accomplished by statute or Executive order of the President. Although the statute or Executive order need not specifically require the creation of a system of records from this information, the operation of a system of records required by contract must have a direct nexus to the accomplishment of a statutory or Presidentially directed goal.

If the contract provides for the operation of a system of records to accomplish an agency function, then "* * * the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system."

The clause "* * * consistent with its authority * * *" makes it clear that the subsection does not give an agency any new authority additional to what it otherwise uses. The subsection clearly imposes new responsibilities upon an agency but does not confer any new authority to implement it. Although the method by which agencies cause the requirements of the section to be applied to systems is not set forth, the manner of doing so much be consistent with the agency's existing authority. The method of causing was envisioned to be a clause in the contract, but as with the "Buy America" provision in Government contracts, the breach of the clause was not necessarily intended to result in a termination of the contract. In addition, several of the requirements of

the Privacy Act are simply not applicable to systems maintained by contractors, and this clause was a method of indicating that an agency was not required to impose those new standards. Agencies were given some discretion in determining the method or methods by which they would cause the otherwise applicable requirements to be applied to a system maintained under contract. This subsection does not merely require that an agency include provisions consistent with the Privacy Act in its contracts. It requires, in addition, that the agency cause the requirements of the Act to be applied, limited only by its authority to do so. Because of this agency accountability—which underlies many of the provisions of the Privacy Act—there should be an incentive for an agency to cause its contractors who are subject to this subsection to apply the requirements of the section in a manner which is enforceable. Otherwise, the agencies may end up performing those functions in order to satisfy the activity of the "cause" requirement.

The decision as to whether to contract for the operation of the system or to perform the operation "in-house" was not intended to be altered by this subsection. Furthermore, this subsection was not intended to significantly alter GSA and OMB authority under the Brooks Act (P.L. 89-306) or Executive Order No. 11717 dated May 9, 1973, concerning the method of ADP procurement. The principles concerning reliance upon the private sector in OMB Circular No. A-76, and related provisions were also not intended to be changed.

The provisions would apply to all systems of records where, for example—

The determinations on benefits are made by Federal agencies;

The records are maintained for administrative functions of the Federal agency such as personnel, payroll, etc; or

Health records being maintained by an outside contractor engaged to provide health services to agency personnel.

The provisions would not apply to systems of records where:

Records are maintained by the contractor on individuals whom the contractor employs in the process of providing goods and services to Federal government.

An agency contracts with a state or private educational organization to provide training and the records generated on contract students pursuant to their attendance (admission forms, grade reports) are similar to those maintained on other students and are commingled with their records on other students.

When a system of records is to be operated by a contractor on behalf of an agency for an agency function, the contractual instrument must specify, to the extent consistent with the agency's authority to require it, that those records be maintained in accordance with the Act. Agencies will modify their procurement procedures and practices to ensure that all contracts are reviewed before award to determine whether a system of records within the scope of the Act is being contracted for and, if so, to include appropriate language regarding the maintenance of any such systems.

For systems operated under contracts awarded on or after September 27, 1975, contractor employees may be subject to the criminal penalties of subsections (i)(1) and (2) (for disclosing records the disclosure of which is prohibited by the Act or for failure to publish a public notice). Although the language is not clear on this point, it is arguable that such criminal liability only exists to the extent that the contractual instrument has stipulated that the provisions of the Act are to be applied to the contractually maintained system. However, an agency which fails, within the limits of its authority, to require that systems operated on its behalf under contracts, may be civilly liable to individuals injured as a consequence of any subsequent failure to maintain records in conformance with the Act. The reference to contractors as employees is intended only for purposes of the requirements of the Act and not to suggest that, by virtue of this language, they are employees for any other purposes.

## Subsection (n) Mailing Lists

Subsection (n) "An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public."

The language in this section is susceptible of various interpretations and must be read in the context of relevant legislative history. It is clear, however, that this provision seeks to reach the sale or rental of lists of names and addresses for commercial or other solicitation purposes not related to the purposes for which the information was collected.

Language included in the legislation would prohibit the sale or rental of mailing lists, names and addresses, by Federal agencies maintaining them. The philosophy behind this amendment is that the Federal Government is not in the mailing list business, and it should not be Federal policy to make a profit from the routine business of government, particularly when the release of such lists has been authorized under the Freedom of Information Act. In other words, such lists can not be withheld by an agency, unless it determines that the release would constitute a clearly unwarranted invasion of privacy under section 552(b)(6) of Title 5, United States Code.

Thus, the language of the bill before us does not ban the release of such lists where either sale or rental is not involved. (Congressional Record, December 18, 1974, p. H12246).

While the reference to the FOIA speaks only of "a clearly unwarranted invasion of personal privacy" (see 5 U.S.C. 552(b)(6)) agencies may presumably withhold lists of names and addresses from the public under any of the exemptions to the FOIA (5 U.S.C. 552(b)) when they deem it appropriate to do so.

It is apparent that what is prohibited is "sale or rental" of such lists and the language and may be read to prohibit "the sale or rental of lists of names and addresses by Federal agencies unless the sale or rental is specifically authorized by law. [emphasis added]." (Senate Report 93-1183, p. 31)

The Senate report, when read in combination with the House floor discussion cited above, suggests that agencies may not sell or rent mailing lists for commercial or solicitation purposes unless they are authorized specifically by law to sell or rent such lists. It is equally apparent that this language in no way creates an authority to withhold any records otherwise required to be disclosed under the Freedom of Information Act (5. U.S.C. 552). It is problematic whether the language "may not be sold or rented" precludes the changing of fees authorized under the Freedom of Information Act. It would seem reasonable to conclude that fees permitted to be charged for materials required to be disclosed under the Freedom of Information Act are not precluded and that lists, such as agency telephone directories, which are currently sold to the public by the Superintendent of Documents can continue to be sold.

Finally, this provision appears not to have been intended to reach the disclosure of names and addresses to agencies or other organizations other than for commercial or solicitation purposes. Other disclosure (e.g., the disclosures of names and addresses for a statistical study or to issue checks) would be subject to the requirements of section (b).

## Section (o) Report on New Systems

Section (o) "Each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers."

This subsection is intended to assure that proposals to establish or modify systems of records are made known in advance so that

There is a basis for monitoring the development or expansion of agency record-keeping activity.

The Commission established by section 5 can review trends in the use of personal information and the application of technology.

This provision resulted from the discussions surrounding the need for an independent agency to regulate and oversee the implementation of the Act:

The compromise amendment still would require that agencies provide adequate advance notice to the Congress and to the Office of Management and Budget of any proposal to establish or alter a system of records in order to permit an evaluation of the privacy impact of that proposal. In addition to the privacy impact, consideration should be given to the effect the proposal may have on our Federal system and on the separation of powers between the three branches of government. These concerns are expressed in connection with recent proposals by the General Services Administration and Department of Agriculture to establish a giant data facility for the storing and sharing of information between those and perhaps other departments. The language in the Senate report reflects the concern attached to the inclusion of this language in S.3418. (Senate Report 93-1183, page 64-66).

The acceptance of the compromise amendment does not question the motivation or need for improving the Federal government's data gathering and handling capabilities. It does express a concern, however, that the office charged with central management and oversight of Federal activities and the Congress have an opportunity to examine the impact of new or altered data systems on our citizens, the provisions

for confidentiality and security in those systems and the extent to which the creation of the system will alter or change interagency or intergovernmental relationships related to information programs. (Congressional Record, December 17, 1974, p. S21818)

A report is required to be submitted for each proposed new system of records and for changes to existing systems. The criteria for determining what constitutes a change in an existing system requiring the preparation of a report under this subsection are substantially the same as those discussed under subsection (e)(4), the public notice; namely any change which:

Increases the number or types of individuals on whom records are maintained;

Expands the type or amount of information maintained;

Increases the number or categories of agencies or other persons who may have access to those records;

Alters the manner in which the records are organized so as to change the nature or scope of those records; e.g., the combining of two or more existing systems;

Modifies the way in which the system operates or its location(s) in such a manner as to alter the process by which individuals can exercise their rights under the Act; e.g., to seek access or request amendment of a record; or

Changes the equipment configuration on which the system is operated so as to create the potential for greater access; e.g., adding a telecommunications capability.

The reports required under this section are to be submitted to the Congress, to the Director of the Office of Management and Budget (Attn: Information Systems Division) and to the Privacy Protection Study Commission.

The Office of Management and Budget will issue, under separate cover, more detailed guidance on the format, timing, and content of the reports.

## Subsection (p) Annual Report

Subsection (p) "The President shall submit to the Speaker of the House and the President of the Senate, by June 30 of each calendar year, a consolidated report, separately listing for each Federal agency the number of records contained in any system of records which were exempted from the application of this section under the provisions of subsections (j) and (k) of this section during the preceding calendar year, and the reasons for the exemptions, and such other information as indicates efforts to administer fully this section."

This subsection provides that the President submit to the Congress a list of systems exempted from the Act under the terms of section (j) or (k). "Also to be included in the annual report would be the reasons for such exemptions and other information indicating efforts to comply with the law. It is hoped that all such information would be made public. If, however, the nature of any such exemption requires a security classification marking, it should be placed in a separate part of the report so as not to affect the remainder of the annual report." (House Report 93-1416, p. 21.)

Agencies will be required to prepare reports to the Office of Management and Budget (Attn: Information Systems Division) by April 30 of each year (beginning April 30, 1976) covering their activities under the Act during the preceding calendar year. The Office of Management and Budget will analyze data contained in the agency reports and prepare the required Presidential report to the Congress. The information required in the individual agency reports will include not only the minimum information required for inclusion in the report to Congress but also such information as is needed to evaluate the overall effectiveness of the Privacy Act implementation, identify areas in which implementing policies or procedures should be changed, and assess the impact of Federal data management activities.

Agency reports shall include but not be limited to the following:

Summary—A brief management summary of the status of actions taken to comply with the Act, the results of these efforts, any problems encountered and recommendations for any changes in legislation, policies or procedures.

Accomplishments—A summary of major accomplishments; i.e., improvements in agency information practices and safeguards.

Plans—A summary of major plans for activities in the upcoming year, e.g., area of emphasis, additional securing of facilities planned.

Exemptions—A list of systems which are exempted during the year from any of the operative provisions of this law permitted under the terms of subsections (j) and (k), whether or not the exemption was obtained during the year, the number of records in each system exempted from each specific provision and reasons for invoking the exemption.

Number of systems—A brief summary of changes to the total inventory of personal data systems subject to the provisions of the Act including reasons for major changes; e.g., the extent to which review of the relevance of an necessity for records has resulted in elimination of all or portions of systems of records or any reduction in the number of individuals on whom records are maintained. Agencies will also be requested to provide OMB with a detailed listing of all their systems of records, the number of records in each and certain other data to facilitate oversight of the implementation of the Act. (Detailed reporting procedures will be issued under separate cover.)

Operational Experiences—A general description of operational experiences including estimates of the number of individuals (in relation to the total number of records in the system) requesting information on the existence of records pertaining to them, refusing to provide information, requesting access to their records, appealing initial refusals to amend records, and seeking redress through the courts.

More extensive data will be requested on those cases where the agency was unable to comply with the requirements of the Act or these guidelines; e.g., access was not granted or a request to amend could not be acknowledged within prescribed time limits.

More detailed instructions on the format, content and timing of these reports will be issued by OMB.

## Section (q) Effect of Other Laws

Subsection (q) "No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise accessible to such individual under the provisions of this section."

This provision makes it explicit that an individual may not be denied access to a record pertaining to him under subsection (d)(1), access to records, because that record is permitted to be withheld from members of the public under the Freedom of Information Act. The only grounds for denying an individual access to a record pertaining to him are the exemptions stated in this Act, subsections (j) and (k), and subsection (l) archival records. In addition consideration may have to be given to other statutory provisions which may govern specific agency records.

# AMERICAN COLLEGE PERSONNEL ASSOCIATION

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## STATEMENT OF ETHICAL AND PROFESSIONAL STANDARDS

## PREAMBLE

The American College Personnel Association, a Division of the American Personnel and Guidance Association, is an educational, scientific, and professional organization whose members are dedicated to enhancing the worth, dignity, potential, and uniqueness of each individual and thus to the service of society. Although members work in various post-secondary educational settings, they are committed to protecting individual human rights, advancing knowledge of college student growth and development, and promoting effectiveness in student affairs organizations and operations. As a means of supporting these commitments, members of the American College Personnel Association subscribe to the following standards of ethical and professional conduct.

These standards are designed to provide a guide for ethical and professional behavior in general student affairs practice and to complement the existing "Ethical Standards" of the American Personnel and Guidance Association. Members in specialized student affairs settings are also encouraged to consult ethical standards specific to their settings.

### A. Relationships With Students

1. Members treat students as individuals who possess dignity, worth, and the ability to be self-directed and assist students in becoming productive, responsible citizens and members of society. Members are concerned for the welfare of *all* students and work for constructive change on behalf of students.
2. Members respect the student's right of self-determination. The student's freedom of choice should be limited only when the individual's decisions or actions may result in significant damage to self, to others, or to the institution.
3. Members explicitly inform students of the nature and/or limits of confidentiality in non-counseling, as well as in counseling relationships.
4. Members respect the student's right to privacy and share information about individuals only in accordance with institutional policies, or when given permission by the student, or when required to prevent personal harm.
5. Members confront students in a professional manner with issues and behaviors that have ethical implications.

### B. General Responsibilities

1. Members contribute to the development of the profession through sharing skills and program ideas, serving professional organizations, educating emerging professionals, improving professional practices, keeping abreast of contemporary theories and applications, and conducting and reporting research.
2. Members realize professional growth is continuous and cumulative and is characterized by a well-defined philosophy that explains why and how members function in the student affairs profession. Members base this philosophy upon sound theoretical principles and an explicitly examined personal value system (assuming congruence with the basic assumptions from the Student Personnel Point of View and the Student Development Point of View).
3. Members model ethically responsible behavior for students and colleagues and expect ethical behavior among members and nonmembers at all times. When information is possessed which raises serious doubt as to the ethical behavior of professional colleagues, whether Association members or not, members are encouraged to take action to rectify such a condition. Possible actions include (a) confronting the individual in question, (b) utilizing institutional channels, and/or (c) using available Association mechanisms.
4. Members do not seek self-enhancement or self-aggrandizement through evaluations or comparisons that are damaging to others.
5. Members perform in a fashion that is not discriminatory on the basis of race, sex, national origin, affectional/sexual preference, handicap, age or creed, and they work actively to modify discriminatory practices when encountered.
6. Members maintain and enhance professional effectiveness by improving skills and acquiring new knowledge through systematic continuing education and assure the same opportunity for persons under their supervision.
7. Members monitor their personal functioning and effectiveness and when needed seek assistance from appropriate professionals (e.g., colleague, physician, counselor, attorney).

8. Members accurately represent their professional credentials, competencies, and limitations to all concerned and are responsible for correcting any misrepresentations of these qualifications by others.
9. Members have a clear responsibility to ensure that information provided to the public or to subordinates, peers and supervisors is factual, accurate, and unbiased.
10. Members establish fees for professional services after consideration of fees charged by other professionals delivering comparable services and the ability of the recipient to pay. Members provide some services for which they receive little or no remuneration.
11. Members demonstrate sensible regard for the social codes and moral expectations of the communities in which they live and work. They recognize that violations of accepted moral and legal standards may involve their clients, students, or colleagues in damaging personal conflicts and may impugn their own reputations, the integrity of the profession, and the reputation of the employing institution.
12. Members maintain ethical relationships with colleagues and students and refrain from relationships which impinge on the dignity, moral code, self-worth, professional functioning, and/or personal growth of these individuals. Specifically, members are aware that sexual relationships hold great potential for exploitation. Consequently, members refrain from having sexual relationships with anyone to whom they act as counselors or therapists. Sexual relationships with staff members or students for whom one has supervisory or evaluative responsibilities have high potential for causing personal damage and for limiting the exercise of professional responsibilities and are therefore unprofessional and unethical.

### C. Professional and Collegial Relationships

1. Members seek to collaborate and to share expertise with other student affairs staff members, faculty members, administrators, and students.
2. Members contribute periodically to the professional development of colleagues with no compensation other than for immediate expenses.
3. Members accurately acknowledge contributions to program development, program implementation, evaluations, and reports made by others.
4. Members support the appropriate efforts of fellow student affairs professionals and institutional programs. Constructive criticism and professional disagreements are shared (in private when possible) with those individuals concerned and in a manner that is not demeaning.
5. Members establish working agreements with subordinates and supervisors that clearly define accountability procedures, mutual expectations, evaluation criteria, position duties, and decision-making procedures.
6. Members conduct themselves in such a manner that their positions are not used to seek unjustified personal gains, sexual favors, or unfair advantages, including goods and services not normally accorded those in such positions.
7. Members regularly evaluate the professional development and job performance of direct line subordinate staff members and recommend appropriate actions to enhance professional development and improve job performance.
8. Members seek regular evaluations of their job performance and professional development from colleagues, supervisors, and clientele.
9. Members are fair and unbiased in judgments they render about persons with whom they work. Members have a right to expect that colleagues and supervisors will strive to render fair and unbiased judgments about them. Members respect the rights of others to differ in the judgments and evaluations they render so long as these judgments are not intended to do harm or disservice.
10. Members have the right to request and to receive support from the Association in matters of ethical practice and standards as defined herein.

### D. Institutional Relationships

1. Members make contributions to their employing institution in support of its goals, missions, and policies.
2. Members ensure that accurate presentation of institutional goals, services, programs, and policies are made to the public, students, prospective students, colleagues, and subordinates.
3. Members inform appropriate officials of conditions that may be potentially disrup-

tive or damaging to the institution's mission, personnel, and property.
4. Members inform employers of conditions which may limit or curtail the members' effectiveness.
5. Members have responsibilities both to the individuals served and to the institution within which the service is performed. The acceptance of employment in an institution implies that members are in general agreement with the mission of the institution. Therefore, the professional activities of members are expected to be in accord with the mission of the institution.
6. When the member and the institution encounter substantial disagreements or conflicts concerning professional or personal values, the member has the responsibility to directly and constructively seek resolution of the conflicts. Resolution of such conflicts may result either in sustained efforts to modify institutional policies and practices or in a decision by the member to terminate the institutional affiliation.
7. Members regularly and systematically evaluate those programs, services, and courses for which they are responsible in accord with sound evaluation principles and make these evaluation results available to appropriate institutional personnel.

### E. Employment and Hiring Practices

1. Employers disseminate widely advertisements and notices which accurately and clearly describe: (a) responsibilities of the position; (b) information about the institution; (c) necessary qualifications, such as education, skills, and experiences; (d) salary range and benefits; (e) special restrictions, if any (e.g., live-in requirements, night work expectations, travel requirements, positions of a temporary nature).
2. Employers clearly specify in writing the interview and selection process to the applicant and strictly follow that process. Applicants are periodically notified of the status of their applications during the selection process.
3. Employers do not discriminate against applicants on the basis of race, color, creed, sex, national origin, affectional/sexual preference, age, or handicap.
4. Employers hire only individuals for professional positions who have received educational preparation experiences appropriate for the requirements of the positions.
5. Employers provide opportunities during the interviewing process for the applicant to gain accurate information about institutional colleagues, policies, philosophy, and about position requirements and responsibilities.
6. Employers notify employees within a minimum of thirty days when terminating or changing the status of their employment, specifying reasons and providing full due process rights.
7. Applicants accurately represent their education, skills, and experiences.
8. Applicants respond to job offers without undue delay. Applicants accept only those professional positions they intend to assume. Both applicants and employers honor mutually derived contracts.
9. Applicants advise all institutions at which applications are pending immediately when they have signed a contract and are withdrawing from the applicant pool.
10. Members inform their employers a minimum of thirty days before leaving their positions.

### F. Research, Publication, and Written Communication

1. Members are aware of and responsive to all pertinent ethical principles when planning any research activity dealing with human subjects (see *Ethical Principles in the Conduct of Research with Human Participants* [1973]. Washington, D.C.: American Psychological Association).
2. Members who serve as principal researchers are ultimately responsible for assuring that all research activities conform to ethical standards. Others involved in the research activities share full and equal responsibility.
3. Members are responsible for the welfare of their research subjects throughout the study and take precautions to prevent injurious psychological, physical, or social effects:

   a. When control groups are used care is exercised to assure that they are not deprived of services to which they are entitled.
   b. When withholding information or providing misinformation to subjects is essential to the investigation (provided the conditions above are met), members fully inform subjects about the nature of the research and take

corrective action as soon as possible following data collection.

c. Participation in research is expected to be voluntary.

4. Members disguise the identity of the subjects when supplying data or when reporting research results unless specific authorization to do otherwise has been given by such subjects.

5. Members conduct and report investigations in a manner that minimizes the possibility that results will be misleading.

6. Members become familiar with and give recognition to previous work on the topic (both published and unpublished), observe all copyright laws, and give full credit to all to whom credit is due when conducting and reporting research.

7. Members who agree to cooperate with another individual in research and/or publication must cooperate as promised in terms of punctuality of performance and with equal regard for the completeness and accuracy of the information provided.

8. Members acknowledge major contributions to research projects and professional writings through joint authorships, listing the author who made the principal contribution first. Minor contributions of a professional or technical nature are acknowledged in footnotes or introductory statements.

9. Members do not demand co-authorship of publications when their involvement has been ancillary. Teachers and/or supervisors exercise caution when working with students and/or subordinate staff so as not to unduly pressure them for joint authorship.

10. Members make sufficient original research data available to qualified others who may wish to replicate the study.

11. Members communicate to other professionals the results of any research judged to be of professional or scientific value. Results reflecting unfavorably on specific institutions, programs, services, or vested interests should not be withheld for such reasons.

12. Members submit manuscripts to only one journal when seeking publication of an article. If not accepted by that journal the manuscript may then be submitted to another journal. Members do not seek publication of the same material in more than one publication without receiving consent from the editors and/or publishers involved. Slightly altered, previously published manuscripts or manuscripts under review are not submitted without first informing the editors of both publications.

## G. Professional Preparation and Development

Members who are responsible for teaching others should be guided by statements on professional preparation issued by the Association and relevant accrediting agencies. Members who function as faculty members assume unique ethical responsibilities that frequently go beyond that of members who do not function in this capacity.

1. Members inform prospective students of program expectations, basic skills needed for successful completion, and employment prospects prior to admission to the program. Information about programs based on a particular theoretical position is clearly communicated to students upon application.

2. Members ensure that experiences focusing on self-understanding or growth are voluntary or, if required as part of the program, are made known to prospective students prior to entering the program. When the program offers a growth experience with an emphasis on self-disclosure or other relatively intimate or personal involvement, members should have no administrative, supervisory, or evaluative authority regarding the participant.

3. Members support preparation program efforts by providing practicum settings, field placements, and consultation to students and/or faculty members.

4. Members in charge of preparation programs ensure that such programs integrate both academic study and supervised practice.

5. Members develop and implement clear policies within their institution regarding field placement and the roles of the student and the supervisor in such placements.

6. Members present thoroughly varied theoretical positions or make provision for their study so that students may develop a broad base of knowledge.

7. Members establish programs directed toward developing students' skills, knowledge, and self-understanding, stated whenever possible in terms of competency or performance.

8. Members identify the level of competence of the student during and at the end of the programs and communicate these assessments to the student.

9. Members, through continual student evaluation and appraisal, are aware of any personal limitations of the students that might impede future performance. Members not only assist students in securing remedial assistance but also screen from the program those students who are judged unabled to perform as competent professionals.

11. Members provide programs that include research components commensurate with the levels of expected functioning. Paraprofessional and technician-level personnel should be trained as consumers of research and should learn how to evaluate their own and their program's effectiveness. Advanced graduate education, especially at the doctoral level, includes preparation for conducting original research.

11. Members make students aware of the ethical responsibilities and standards of the profession by distributing and discussing this document and other relevant documents.

12. Members conduct professional preparation in keeping with the most current guidelines of the American Personnel and Guidance Association and the American College Personnel Association.

13. Members who serve as preparation program faculty members and/or practitioners aid in providing in-service development programs and educational experiences to one another.

## H. Counseling and Testing

This section constitutes general guidelines for counseling and testing experiences frequently encountered by student affairs professionals. Those professionals who are engaged in intensive counseling and/or testing activities are urged to consult the American Personnel and Guidance Association's Ethical Standards for more specific standards.

To the extent that the student's choice of action is not imminently self- or other-destructive, the student must retain freedom of choice.

1. The counseling relationship and information resulting therefrom must be kept confidential, consistent with the obligations of the member as a professional person.

2. Members who learn from counseling relationships of conditions that are likely to harm the client or others, immediately report the condition to a responsible authority in order to preclude harm.

3. Members inform students of the conditions and/or limitations under which they may receive counseling assistance at or before the time when the counseling relationship is entered. This is particularly so when conditions exist of which the student could be unaware.

4. Records of the counseling relationship, including interview notes, test data, correspondence, tape recordings, and other documents, are to be considered professional information for use in counseling and they are not part of the public or official records of the institution or agency in which the counselor is employed. Revelation to others of counseling records shall occur only upon the expressed consent of the client or upon court order.

5. Members avoid initiating a counseling relationship or terminate an existing relationship if they are unable to be of professional assistance to the student. In either event, members refer the student to an appropriate specialist. (Members must be knowledgeable about referral resources so that a satisfactory referral can be initiated.) In the event the student declines the suggested referral, members are not obliged to continue the relationship.

6. Members adhere to the American College Personnel Association standards established in "The Use of Group Procedures in Higher Education: A Position Statement by ACPA." *Journal of College Student Personnel*, 1976, *17*, 161–168.

7. Members provide adequate orientation or information to students prior to and following any test administration so that the results of testing may be placed in proper perspective with other relevant factors. In so doing, members recognize the effects of socioeconomic, ethnic and cultural factors on test scores.

8. Members inform students about the purpose of testing and make explicit the planned use of the results prior to testing. Members ensure that instrument limitations are not exceeded and that periodic review and/or retesting are made to prevent stereotyping.

9. Members recognize the limits of their competence in the administration, scoring, and interpretation of tests and perform only those functions for which they are qualified.

10. Members ensure strict test security because the meaningfulness of test results used in personnel, guidance, and counseling functions generally depends on students' unfamiliarity with the specific items on the test.

11. Members do not permit the appropriation, reproduction, or modification of published tests or parts thereof without the expressed permission and adequate recognition of the original author or publisher.

12. Members refer to the following sources in the preparation, publication, and distribution of tests:

a. *Standards for Educational and Psychological Tests and Manuals* (1974), revised edition, published by the American Psychological Association on behalf of itself, the American Educational Research Association, and the National Council on Measurement in Education.

b. "The Responsible Use of Standardized Tests" the position statement of the American Personnel and Guidance Association, published in *Guidepost*, October 5, 1978.

*Adopted by the*
*American Personnel Association*
*November 6, 1980*

# ASCA CODE OF ETHICS

1. Responsibilities of the school counselor stem from these basic premises and basic tenets in the counseling process.

A. Each person has the right to dignity as a human being

1. without regard to race, sex, religion, color, socio-economic status

2. without regard to the nature and results of behavior, beliefs and inherent characteristics.

B. Each person has the right to individual self-development.

C. Each person has the right to self-direction and responsibility for making decisions.

D. The school counselor, equipped with professional competency, and understanding of the behavioral sciences and philosophical orientation to school and community, performs a unique, distinctive and highly specialized service within the context of the education purpose and structure of the school system. Performance of this rests upon acquired techniques and informed judgement which is an integral part of counseling. Punitive action is not part of the counseling process. The school counselor shall use these skills in endeavoring constantly to insure that the counselee has the afore-mentioned rights and a reasonable amount of the counselor's time.

E. The ethical conduct of the school counselors will be consistent with the state regulations.

F. The school counselor may share information gained in the counseling process for essential consultation with those appropriate persons specifically concerned with the counselee. Confidential information may be released only with the consent of the individual except when required by court order.

## I. Principal responsibilities of the school counselor to PUPILS

A. The school counselor

1. has a principal obligation and loyalty to respect each person as an unique individual and to encourage that which permits individual growth and development.

2. must not impose consciously his attitudes and values on the counselee though he is not obligated to keep his attitudes and values from being known.

3. should respect at all times the confidences of the counselee; should the counselee's condition be such as to endanger the health, welfare and/or safety of self or others, the counselor is expected to report this fact to an appropriate responsible person.

4. shall be knowledgeable about the strengths and limitations of tests; will share and interpret test information with the counselee in an accurate, objective and understandable manner to assist the counselee in self-evaluation.

5. shall assist the counselee in understanding the counseling process in order to insure that the person counseled with will understand how information obtained in conferences with the counselor may be used.

## II. Principal responsibilities of the School Counselor to PARENTS

A. The School counselor

1. shall work with parents so as to enhance the development of the counselee.

2. shall treat information received from the parents of a counselee in an confidential manner.

3. shall share, communicate and interpret pertinent data, and the counselee's academic progress with these parents.

4. shall share information about the counselee only with those persons properly authorized to receive this information.

## III. Principal responsibilities of the School Counselor to FACULTY, ADMINISTRATION AND COLLEAGUES

A. The school counselor

1. shall use discretion, within legal limits and requirements of the state in releasing personal information about a counselee to maintain the confidences of the counselee.

2. shall contribute pertinent data to cumulative records and make it accessible to professional staff (except personal factors and problems which are highly confidential in nature).

3. shall cooperate with colleagues by making available as soon as possible requested reports which are accurate, objective, meaningful and concise.

4. shall cooperate with other pupil personnel workers by sharing information and/or obtaining recommendations which would benefit the counselee.

5. may share confidential information when working with the same counselee, with the counselee's knowledge and permission.

6. must maintain confidentiality even though others may have the same knowledge.

7. shall maintain high professional integrity regarding fellow workers when assisting in problem areas related to actions, attitudes and competencies of faculty or colleagues.

## IV. Principal responsibilities of the School Counselor to SCHOOL AND COMMUNITY

A. The school counselor

1. shall support and protect the educational program against any infringement which indicates that it is not to the best interest of the counselee or program.

2. must assume responsibility in delineating his role and function, in developing educational procedure and program, and in assisting administration to assess accountability.

3. shall recommend to the administration any curricular changes necessary in meeting valid educational needs in the community.

4. shall work cooperatively with agencies, organizations and individuals in school and community which are interested in welfare of youth.

5. shall, with appropriate release, supply accurate information according to his professional judgement to community agencies, places of employment and institutions of higher learning.

6. should be knowledgeable on policies, laws, and regulations as they relate to the community, and use educational facilities accordingly.

7. shall maintain open communication lines in all areas pertinent to the best interest of counselees.

8. shall not accept renumeration beyond contractual salary for counseling any pupil within the school district. The counselor shall not promote or direct counselees into counseling or educational programs which would result in renumeration to the counselor.

9. shall delineate in advance his responsibilities in case of any confrontation and have an agreement which is supported by the administration and the bargaining agency.

## V. Principal responsibilities of the School Counselor to SELF

A. The school counselor

1. should continue to grow professionally by

a. attending professional meetings

b. actively participating in professional organizations

c. being involved in research

d. keeping abreast of changes and new trends in the profession and showing a willingness to accept those which have proved to be effective.

2. should be aware of and function within the boundaries of his professional competency.

3. should see that his role is defined in mutual agreement among the employer, students to be served, and the counselor. Furthermore, this role should be continuously clarified to students, staff, parents and community.

## VI. Principal responsibilities of the School Counselor to the PROFESSION

A. The school counselor

1. should be cognizant of the developments in his profession and be an active contributing participant in his professional association—local, state and national.

2. shall conduct himself in a responsible manner and participate in developing policies concerning guidance.

3. should do research which will contribute to professional and personal effectiveness.

4. shall under no circumstances undertake any group encounter of sensitivity session, unless he has sufficient professional training.

5. shall, in addition to being aware of unprofessional practices, also be accountable for taking appropriate action to eliminate these practices.

Adopted by the ASCA Governing Board in October 1972.

# ETHICAL GUIDELINES FOR GROUP LEADERS[1]

## PREAMBLE

*One characteristic of any professional group is the possession of a body of knowledge and skills and mutually acceptable ethical standards for putting them into practice. Ethical standards consist of those principles which have been formally and publically acknowledged by the membership of a profession to serve as guidelines governing professional conduct, discharge of duties, and resolution of moral dilemmas. In this document, the Association for Specialists in Group Work has identified the standards of conduct necessary to maintain and regulate the high standards of integrity and leadership among its members.*

*The Association for Specialists in Group Work recognizes the basic commitment of its members to the Ethical Standards of its parent organization, the American Personnel & Guidance Association and nothing in this document shall be construed to supplant that code. These standards are intended to complement the APGA standards in the area of group work by clarifying the nature of ethical responsibility of the counselor in the group setting and by stimulating a greater concern for competent group leadership.*

*The following ethical guidelines have been organized under three categories: the leader's responsibility for providing information about group work to clients, the group leader's responsibility for providing group counseling services to clients, and the group leader's responsibility for safeguarding the standards of ethical practice.*

## Subpart A—Responsibility for Providing Information About Group Work and Group Services

(A-1) Group leaders shall fully inform group members, in advance and preferably in writing, of the goals in the group, qualifications of the leader, and procedures to be employed.

(A-2) The group leader shall conduct a pre-group interview with each prospective member for purposes of screening, orientation, and, in so far as possible, shall select group members whose needs and goals are compatible with the established goals of the group; who will not impede the group process; and whose well-being will not be jeopardized by the group experience.

(A-3) Group leaders shall protect members by defining clearly what confidentiality means, why it is important, and the difficulties involved in enforcement.

(A-4) Group leaders shall explain, as realistically as possible, exactly what services can and cannot be provided within the particular group structure offered.

(A-5) Group leaders shall provide prospective clients with specific information about any specialized or experimental activities in which they may be expected to participate.

(A-6) Group leaders shall stress the personal risks involved in any group, especially regarding potential life-changes, and help group members explore their readiness to face these risks.

(A-7) Group leaders shall inform members that participation is voluntary and that they may exit from the group at any time.

(A-8) Group leaders shall inform members about recording of sessions and how tapes will be used.

## Subpart B—Responsibility for Providing Group Services to Clients

(B-1) Group leaders shall protect member rights against physical threats, intimidations, coercion, and undue peer pressure insofar as is reasonably possible.

(B-2) Group leaders shall refrain from imposing their own agendas, needs, and values on group members.

(B-3) Group leaders shall insure to the extent that it is reasonably possible that each member has the opportunity to utilize group resources and interact within the group by minimizing barriers such as rambling and monopolizing time.

(B-4) Group leaders shall make every reasonable effort to treat each member individually and equally.

(B-5) Group leaders shall abstain from inappropriate personal relationships with members throughout the duration of the group and any subsequent professional involvement.

(B-6) Group leaders shall help promote independence of members from the group in the most efficient period of time.

(B-7) Group leaders shall not attempt any technique unless thoroughly trained in its use or under supervision by an expert familiar with the intervention.

(B-8) Group leaders shall not condone the use of alcohol or drugs directly prior to or during group sessions.

(B-9) Group leaders shall make every effort to assist clients in developing their personal goals.

(B-10) Group leaders shall provide between-session consultation to group members and follow-up after termination of the group, as needed or requested.

## Subpart C—Responsibility for Safeguarding Ethical Practice

(C-1) Group leaders shall display these standards or make them available to group members.

(C-2) Group leaders have the right to expect ethical behavior from colleagues and are obligated to rectify or disclose incompetent, unethical behavior demonstrated by a colleague by taking the following actions:

(a) To confront the individual with the apparent violation of ethical guidelines for the purposes of protecting the safety of any clients and to help the group leader correct any inappropriate behaviors.

(b) Such a complaint should be made in writing including the specific facts and dates of the alleged violation and all relevant supporting data. The complaint should be forwarded to:

The Ethics Committee,
c/o The President
Association of Specialists in
Group Work
Two Skyline Place, Suite 400
5203 Leesburg Pike
Falls Church, Virginia 22041

The envelope must be marked "CONFIDENTIAL" in order to assure confidentiality for both the accuser(s) and the alleged violator(s). Upon receipt, the President shall (a) check on membership status of the charged member(s), (b) confer with legal counsel, and (c) send the case with all pertinent documents to the chairperson of the ASGW Ethics Committee within ten (10) working days after receipt of the complaint.

(c) If it is determined by the Ethics and Professional Standards Committee that the alleged breach of ethical conduct constitutes a violation, of the "Ethical Guidelines," then an investigation will be started within ten (10) days by at least one member of the Committee plus two additional ASGW members in the locality of the alleged violation. The investigating committee chairperson shall: (a) acknowledge receipt of the complaint, (b) review the complaint and supporting data, (c) send a letter of acknowledgement to the member(s) of the complaint regarding alleged violations along with a request for a response and relevant information related to the complaint and (e) inform members of the Ethics Committee by letter of the case and present a plan of action for investigation.

(d) All information, correspondence, and activities of the Ethics Committee will remain confidential. It shall be determined that no person serving as an investigator on a case has a any disqualifying relationship with the alleged violator(s).

(e) The charged party(ies) will have not more than 30 days in which to answer the charges in writing. The charged party(ies) will have free access to all cited evidence from which to make a defense, including the right to legal counsel and a formal hearing before the ASGW Ethics Committee.

(f) Based upon the investigation of the Committee and any designated local ASGW members one of the following recommendations may be made to the Executive Board for appropriate action:

(1) Advise that the charges be dropped.

(2) Reprimand and admonishment against repetition of the charged conduct.

(3) Notify the charged member(s) of his/her right to a formal hearing before the ASGW Ethics Committee, and request a response be made to the Ethics Chairperson as to his/her decision on the matter. Such hearing would be conducted in accordance with the APGA Policy and Procedures for Processing Complaints of Ethical Violations, "Procedures for Hearings," and would be scheduled for a time coinciding with the annual APGA convention. Conditions for such hearing shall also be in accordance with the APGA Policy and Procedures document, "Options Available to the Ethics Committee, item 3."

(4) Suspension of membership for a specified period from ASGW.

(5) Dismissal from membership in ASGW.

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[1]Approved by the ASGW Executive Board, November 11, 1980

# CODE OF ETHICS FOR CERTIFIED CLINICAL MENTAL COUNSELORS

(This code is an adaptation of the code of the Board of Licensed Professional Counselors in Virginia)

## Preamble

Certified Clinical Mental Health Counselors believe in the dignity and worth of the individual. They are committed to increasing knowledge of human behavior and understanding of themselves and others. While pursuing these endeavors, they make every reasonable effort to protect the welfare of those who seek their services or of any subject that may be the object of study. They use their skills only for purposes consistent with these values and do not knowingly permit their misuse by others. While demanding for themselves freedom of inquiry and communication, certified clinical mental health counselors accept the responsibility this freedom confers: competence, objectivity in the application of skills and concern for the best interests of clients, colleagues, and society in general. In the pursuit of these ideals, clinical mental health counselors subscribe to the following principles:

## Principle 1. Responsibility

In their commitment to the understanding of human behavior, clinical mental health counselors value objectivity and integrity, and in providing services they maintain the highest standards. They accept responsibility for the consequences of their work and make every effort to insure that their services are used appropriately.

a. Clinical mental health counselors accept ultimate responsibility for selecting appropriate areas for investigation and the methods relevant to minimize the possibility that their finding will be misleading. They provide thorough discussion of the limitations of their data and alternative hypotheses, especially where their work touches on social policy or might be misconstrued to the detriment of specific age, sex, ethnic, socio-economic, or other social categories. In publishing reports of their work, they never discard observations that may modify the interpretation of results. Clinical mental health counselors take credit only for the work they have actually done. In pursuing research, clinical mental health counselors ascertain that their efforts will not lead to changes in individuals or organizations unless such changes are part of the agreement at the time of obtaining informed consent. Clinical mental health counselors clarify in advance the expectations for sharing and utilizing research data. They avoid dual relationships which may limit objectivity, whether theoretical, political, or monetary, so that interference with data, subjects, and milieu is kept to a minimum.

b. As employees of an institution or agency, clinical mental health counselors have the responsibility of remaining alert to institutional pressures which may distort reports of counseling findings or use them in ways counter to the promotion of human welfare.

c. When serving as members of governmental or other organizational bodies, clinical mental health counselors remain accountable as individuals to the Code of Ethics of the National Academy of Certified Mental Health Counselors.

d. As teachers, clinical mental health counselors recognize their primary obligation to help others acquire knowledge and skill. They maintain high standards of scholarship and objectivity by presenting counseling information fully and accurately, and by giving appropriate recognition to alternative viewpoints.

e. As practitioners, clinical mental health counselors know that they bear a heavy social responsibility because their recommendations and professional actions may alter the lives of others. They, therefore remain fully cognizant of their impact and alert to personal, social, organizational, financial or political situations or pressures which might lead to misuse of their influence.

f. Clinical mental health counselors provide reasonable and timely feedback to employees, trainees, supervisors, students and others whose work they may evaluate.

## Principle 2. Competence

The maintenance of high standards of professional competence is a responsibility shared by all clinical mental health counselors in the interest of the public and the profession as a whole. Clinical mental health counselors recognize the boundaries of their competence and the limitations of their techniques and only provide services, use techniques, or offer opinions as professionals that meet recognized standards. Throughout their careers, clinical mental health counselors maintain knowledge of professional information related to the services they render.

a. Clinical mental health counselors accurately represent their competence, education, training and experience.

b. As teachers, clinical mental health counselors perform their duties based on careful preparation so that their instruction is accurate, up-to-date and scholarly.

c. Clinical mental health counselors recognize the need for continuing training to prepare themselves to serve persons of all ages and cultural backgrounds. They are open to new procedures and sensitive to differences between groups of people and changes in expectations and values over time.

d. Clinical mental health counselors with the responsibility for decisions involving individuals or policies based on test results should know and understand literature relevant to the tests used and testing problems with which they deal.

e. Clinical mental health counselors/practitioners recognize that their effectiveness depends in part upon their ability to maintain sound interpersonal relations, that temporary or more enduring aberrations on their part may interfere with their abilities or distort their appraisals of others. Therefore, they refrain from undertaking any activity in which their personal problems are likely to lead to inadequate professional services or harm to a client, or, if they are already engaged in such activity when they become aware of their personal problems, they would seek competent professional assistance to determine whether they should suspend or terminate services to one or all of their clients.

## Principle 3. Moral and Legal Standards

Clinical mental health counselors moral, ethical and legal standards of behavior are a personal matter to the same degree as they are for any other citizen, except as these may compromise the fulfillment of their professional responsibilities, or reduce the trust in counseling or counselors held by the general public. Regarding their own behavior, clinical mental health counselors should be aware of the prevailing community standards and of the possible impact upon the quality of professional services provided by their conformance to or deviation from these standards. Clinical mental health counselors should also be aware of the possible impact of their public behavior upon the ability of colleagues to perform their professional duties.

a. To protect public confidence in the profession of counseling, clinical mental health counselors will avoid public behavior that is clearly in violation of accepted moral and legal standards.

b. To protect students, counselors/teachers will be aware of the diverse backgrounds of students and, when dealing with topics that may give offense, will see that the material is treated objectively, that it is clearly relevant to the course, and that it is treated in a manner for which the student is prepared.

c. Providers of counseling services conform to the statutes relating to such services as established by their state and its regulating professional board(s).

d. As employees, clinical mental health counselors refuse to participate in employer's practices which are inconsistent with the moral and legal standards established by federal or state legislation regarding the treatment of employees or of the public. In particular and for example, clinical mental health counselors will not condone practices which result in illegal or otherwise unjustifiable discrimination on the basis of race, sex, religion or national origin in hiring, promotion or training.

e. In providing counseling services to clients clinical mental health counselors avoid any action that will violate or diminish the legal and civil rights of clients or of others who may be affected by the action.

f. Sexual conduct, not limited to sexual intercourse, between clinical mental health counselors and clients is specifically in violation of this code of ethics. This does not, however, prohibit the use of explicit instructional aids including films and video tapes. Such use is within accepted practices of trained and competent sex therapists.

## Principle 4. Public Statements

Clinical mental health counselors in their professional roles may be expected or required to make public statements providing counseling information, professional opinions, or supply information about the availability of counseling prod-

ucts and services. In making such statements, clinical mental health counselors take full account of the limits and uncertainties of present counseling knowledge and techniques. They represent, as objectively as possible, their professional qualifications, affiliations, and functions, as well as those of the institutions or organizations with which the statements may be associated. All public statements, announcements of services, and promotional activities should serve the purpose of providing sufficient information to aid the consumer public in making informed judgements and choices on matters that concern it.

a. When announcing professional services, clinical mental health counselors limit the information to: name, highest relevant degree conferred, certification or licensure, address, telephone number, office hours, cost of services, and a brief explanation of the types of services offered but not evaluative as to their quality of uniqueness. They will not contain testimonials by implication. They will not claim uniqueness of skill or methods beyond those available to others in the profession unless determined by acceptable and public scientific evidence.

b. In announcing the availability of counseling services or products, clinical mental health counselors will not display their affiliations with organizations or agencies in a manner that implies the sponsorship or certification of the organization or agency. They will not name their employer or professional associations unless the services are in fact to be provided by or under the responsible, direct supervision and continuing control of such organizations or agencies.

c. Clinical mental health counselors associated with the development or promotion of counseling devices, books, or other products offered for commercial sale will make every effort to ensure that announcements and advertisements are presented in a professional and factually informative manner without unsupported claims of superiority. They must be supported by scientifically acceptable evidence or by willingness to aid and encourage independent professional scrutiny or scientific test.

d. Clinical mental health counselors engaged in radio, television or other public media activities will not participate in commercial announcements recommending to the general public the purchase or use of any proprietary or single-source product or service.

e. Clinical mental health counselors who describe counseling or the services of professional counselors to the general public accept the obligation to present the material fairly and accurately, avoiding misrepresentation through sensationalism, exaggeration or superficiality. Clinical mental health counselors will be guided by the primary obligation to aid the public in forming their own informed judgements, opinions and choices.

f. As teachers, clinical mental health counselors ensure that statements in catalogs and courase outlines are accurate, particularly in terms of subject matter to be covered, bases for grading, and nature of classroom experiences. As practitioners providing private services, CMH counselors avoid improper, direct solicitation of clients and the conflict of interest inherent therein.

g. Clinical mental health counselors accept the obligation to correct others who may represent their professional qualifications or associations with products or services in a manner incompatible with these guidelines.

## Principle 5. Confidentiality

Clinical mental health counselors have a primary obligation to safeguard information about individuals obtained in the course of teaching, practice, or research. Personal information if communicated to others only with the person's written consent or in those circumstances where there is clear and imminent danger to the client, to others or to society. Disclosures of counseling information are restricted to what is necessary, relevant, and verifiable.

a. All materials in the official record shall be shared with the client who shall have the right to decide what information may be shared with anyone beyond the immediate provider of service and to be informed of the implications of the materials to be shared.

b. The anonymity of clients served in public and other agencies is preserved, if at all possible, by withholding names and personal identifying data. If external conditions require reporting such information, the client shall be so informed.

c. Information received in confidence by one agency or person shall not be forwarded to another person or agency without the client's written permission.

d. Service providers have a responsibility to insure the accuracy and to indicate the validity of data shared with their parties.

e. Case reports presented in classes, professional meetings, or in publications shall be so disguised that no identification is possible unless the client or responsible authority has read the report and agreed in writing to its presentation or publication.

f. Counseling reports and records are maintained under conditions of security and provisions are made for their destruction when they have outlived their usefulness. Clinical mental health counselors insure that privacy and confidentiality are maintained by all persons in the employ or volunteers, and community aides.

g. Clinical mental health counselors who ask that an individual reveal personal information in the course of interviewing, testing or evaluation, or who allow such information to be divulged, do so only after making certain that the person or authorized representative is fully aware of the purposes of the interview, testing or evaluation and of the ways in which the information will be used.

h. Sessions with clients are taped or otherwise recorded only with their written permission or the written permission of a responsible guardian. Even with guardian written consent, one should not record a session against the expressed wishes of a client.

i. Where a child or adolescent is the primary client, the interests of the minor shall be paramount.

j. In work with families, the rights of each family member should be safeguarded. The provider of service also has the responsibility to discuss the contents of the record with the parent and/or child, as appropriate, and to keep separate those parts which should remain the property of each family member.

# BY-LAWS

In this edition of the AMHCA News readers will find a copy of the present AMHCA By-Laws. As mandated by Article VIII these By-Laws are to be published every five years in the AMHCA Journal. The By-Laws and Goverance Committee is seeking comments from AMHCA members concerning these By-Laws. This is your opportunity to have an input into the goverance of your organization. All suggestion will be considered and you may be contacted for further information. If no response is received the committee will act on the assumption that the By-Laws are acceptable as written. Please study them and send all comments, by January 15, 1981, to Tom Murray, 302 Chipaway, Alexandria, IND. 46001. The AMHCA Board of Directors will vote on the final adoption of the By-Laws at the St. Louis Convention.

In Addition we would like your input on the Code of Ethics which has not been completely finalized. Please send your comments to:

Rick Wilmarth
1405 Northgate Drive
Opelika, Al. 36801

## Principle 6. Welfare of the Consumer

Clinical mental health counselors respect the integrity and protect the welfare of the people and groups with whom they work. When there is a conflict of interest between the client and the clinical mental health counselor employing institution, the clinical mental health counselors clarify the nature and direction of their loyalties and responsibilities and keep all parties informed of their commitments. Clinical mental health counselors fully inform consumers as to the purpose and nature of any evaluative, treatment, educational or training procedure, and they freely acknowledge that clients, students, or subjects have freedom of choice with regard to participation.

a. Clinical mental health counselors are continually cognizant both of their own needs and of their inherently powerful position "vis-a-vis" clients, in order to avoid exploiting the client's trust and dependency. Clinical mental health counselors make every effort to avoid dual relationships with clients and/or relationships which might impair their professional judgement or increase the risk of client exploitation. Examples of such dual relationships include treating an employee or supervisor, treating a close friend or family relative and sexual relationships with clients.

b. Where clinical mental health counselors' work with members of an organization goes beyond reasonable conditions of employment, clinical mental health counselors recognize possible conflicts of interests that may arise. When such conflicts occur, clinical mental health counselors clarify the nature of the conflict and inform all parties of the nature and directions of the loyalties and responsibilities involved.

c. When acting as supervisors, trainers, or employers, clinical mental health counselors accord recipients informed choice, confidentiality, and protection from physical and mental harm.

d. Financial arrangements in professional practice are in accord with professional standards that safeguard the best interests of the client and that are clearly understood by the client in advance of billing. This may best be done by the use of a contract. Clinical mental health counselors are responsible for assisting clients in finding needed services in those instances where payment of the usual fee would be a hardship. No commission or rebate or other form of remuneration may be given or received for referral or clients for professional services, whether by an individual or by an agency.

e. Clinical mental health counselors are responsible for making their services readily accessible to clients in a manner that facilitates the client's ability to make an informed choice when selecting a service provider. This responsibility includes a clear written description of what the client may expect in the way of tests, reports, billing, therapeutic regime and schedules.

f. Clinical mental health counselors who find that their services are not beneficial to the client have the responsibility to make this known to the responsible persons.

g. Clinical mental health counselors are accountable to the parties who refer and support counseling services and to the general public and are cognizant of the indirect or long-range effects of their intervention.

h. The clinical mental health counselor attempts to terminate a private service or consulting relationship when it is reasonably clear to the clinical mental health counselor that the consumer is not benefitting from it. If a consumer is receiving services from another mental health professional, clinical mental health counselors do not offer their services directly to the consumer without informing the professional persons already involved in order to avoid confusion and conflict for the consumer.

## Principle 7. Professional Relationship

Clinical mental health counselors act with due regard to the needs and feelings of their colleagues in counseling and other professions. Clinical mental health counselors respect the prerogatives and obligations of the institutions or organizations with which they are associated.

a. Clinical mental health counselors understand the areas of competence of related professions and make full use of other professional, technical, and administrative resources which best serve the interests of consumers. The absence of formal relationships with other professional workers does not relieve clinical mental health counselors from the responsibility of securing for their clients the best possible professional service; indeed, this circumstance presents a challenge to the professional competence of clinical mental health counselors, requiring special sensitivity to problems outside their areas of training, and foresight, diligence, and tact in obtaining the professional assistance needed by clients.

b. Clinical mental health counselors know and take into account the traditions and practices of other professional groups with which they work and cooperate fully with members of such groups when research, services, and other functions are shared or in working for the benefit of public welfare.

c. Clinical mental health counselors strive to provide positive conditions for those they employ and that they spell out clearly the conditions of such employment. They encourage their employees to engage in activities that facilitate their further professional development.

d. Clinical mental health counselors respect the viability, reputation, and the proprietary right of organizations which they serve. Clinical mental health counselors show due regard for the interest of their present or prospective employers. In those instances where they are critical of policies, they attempt to effect change by constructiveaction within the organization.

e. In the pursuit of research, clinical mental health counselors give sponsoring agencies, host institutions, and publication channels the same respect and opportunity for giving informed consent that they accord to individual research participants. They are aware of their obligation to future research workers and insure that host institutions are given feedback information and proper acknowledgment.

f. Credit is assigned to those who have contributed to a publication, in proportion to their contribution.

g. When a clinical mental health counselor violates ethical standards, clinical mental health counselors who know firsthand of such activities should, if possible, attempt to rectify the situation. Failing an informal solution, clinical mental health counselors should bring such unethical activities to the National Academy of Certified Clinical Mental Health Counselors.

## Principle 8. Utilization of Assessment Techniques

In the development, publication, and utilization of counseling assessment techniques, clinical mental health counselors follow relevant standards. Individuals examined, or their legal guardians, have the right to know the results, the interpretations made, and where appropriate, the particulars on which final judgement was based. Test users should take precautions to protect test security but not at the expense of an individual's right to understand the basis for decisions that adversely affect that individual or that individual's dependents.

a. The client has the right to have and the provider has the responsibility to give explanations of test results in language the client can understand.

b. When a test is published or otherwise made available for operational use, it should be accompanied by a manual (or other published or readily available information) that makes every reasonable effort to describe fully the development of the test, the rationale, specifications followed in writing items analysis or other research. The test, the manual, the record forms and other accompanying material should help users make correct interpretations of the test results and should warn against common misuses. The test manual should state explicity the purposes and applications for which the test is recommended and identify any special qualifications required to administer the test and to interpret it properly. Evidence of validity and reliability, along with other relevant research data, should be presented in support of any claims made.

c. Norms presented in test manuals should refer to defined and clearly described populations. These populations should be the groups with whom users of the test will ordinarily wish to compare the persons tested. Test users should consider the possibility of bias in tests or in test items. When indicated, there should be an investigation of possible differences in validity for ethnic, sex, or other subsamples that can be identified when the test is given.

d. Clinical mental health counselors who have the responsibility for decisions about individuals or policies that are based on test results should have a thorough understanding of counseling or educational measurement and of validation and other test research.

e. Clinical mental health counselors should develop procedures for systemically terminating from data files test score information that has, because of the lapse of time, become obsolete.

f. Any individual or organization offering test scoring and interpretation services must be able to demonstrate that their programs are based on appropriate research to establish the validity of the programs and procedures used in arriving at interpretations. The public offering of an automated test interpretation service will be considered as a professional-to-professional consultation. In this the formal responsibility of the consultant is to the consultee but his/her ultimate and overriding responsibility is to the client.

g. Counseling services for the purpose of diagnosis, treatment, or personalized advice are provided only in the context of a professional relationship, and are not given by means of public lectures or demonstrations, newspaperr or magazine articles, radio or television programs, mail, or similar media. The preparation of personal reports and recommendations based on test data secured solely by mail is unethical unless such appraisals are an integral part of a continuing client relationship with a company, as a result of which the consulting clinical mental health counselor has intimate knowledge of the client's personal situation and can be assured thereby that his written appraisals will be adequate to the purpose and will be properly interpreted by the client. These reports must not be embellished with such detailed analysis of the subject's personality traits as would be appropriate only for intensive interviews with the subjects.

## Principle 9. Pursuit of Research Activities

The decision to undertake research should rest upon a considered judgment by the individual clinical mental health counselor about how best to contribute to counseling and to human welfare. Clinical mental health counselors carry out their investigations with respect for the people who participate and with concern for their dignity and welfare.

a. In planning a study the investigator has the personal responsibility to make a careful evaluation of its ethical acceptability, taking into account the following principles for research with human beings. To the extent that this appraisal, weighing scientific and humane values, suggest a deviation from any principle, the investigator incurs an increasingly serious obligation to seek ethical advice and to observe more stringent safeguards to protect the rights of the human research participants.

b. Clinical mental health counselors know and take into account the traditions and practices of other professional groups with members of such groups when research, services, and other functions are shared or in working for the benefit of public welfare.

c. Ethical practice requires the investigator to inform the participant of all features of the research that reasonably might be expected to influence willingness to participate, and to explain all other aspects of the research about which the participant inquires. Failure to make full disclosure gives added emphasis to the investigators' abiding responsibility to protect the welfare and dignity of the research participant.

d. Openness and honesty are essential characteristics of the relationship between investigator and research participant. When the methodological requirements of a study necessitate concealment or deception, the investigator is required to insure as soon as possible the participant's understanding of the reasons for this action and to restore the quality of the relationship with the investigator.

e. In the pursuit of research, clinical mental health counselors give sponsoring agencies, host institutions, and publication channels the same respect and opportunity for giving informed consent that they accord to individual research participants. They are aware of their obligation to future research workers and insure that host institutions are given feedback information and proper acknowledgment.

f. Credit assigned to those who have contributed to a publication, in proportion to their contribution.

g. The ethical investigator protects participants from physical and mental discomfort, harm and danger. If the risk of such consequences exists, the investigator is required to inform the participant of that fact, secure consent before proceeding, and take all possible measures to minimize distress. A research procedure may not be used if it is likely to cause serious and lasting harm to participants.

h. After the data are collected, ethical practice requires the investigator to provide the participant with a full clarification of the nature of the study and to remove any misconceptions that may have arisen. Where scientific or humane values justify delaying or withholding information the investigator acquires a special responsibility to assure that there are no damaging consequences for the participants.

i. Where research procedures may result in undesirable consequences for the participant, the investigator has the responsibility to detect and remove or correct these consequences, including, where relevant, long-term after effects. Information obtained about the research participants during the course of an investigation is confidential. When the possibility exists that others may obtain access to such information, ethical research practice requires that the possibility, together with the plans for protecting confidentiality be explained to the participants as a part of the procedure for obtaining informed consent.

# POLICY AND PROCEDURE FOR PROCESSING COMPLAINTS OF ETHICAL VIOLATIONS (As Approved by APGA Board of Directors, July 10-13, 1980)

The American Personnel and Guidance Association, hereafter referred to as the "Association" or the "APGA", as an educational, scientific and charitable organization, is dedicated to enhancing the worth, dignity, potential and uniqueness of each individual and to render service to society.

The Association, in furtherance of its objectives, administers a Code of Ethics which has been developed and approved by the APGA Board of Directors and the APGA Senate.

The purpose of this document is to facilitate the work of the APGA Ethics Committee by specifying procedures for processing cases of alleged violations of the APGA Code of Ethics, codifying options for sanctioning members and stating appeal procedures. The intent of the Association is to monitor the professional conduct of its members in order to assure sound ethical counseling practices.

## The Ethics Committee

The Ethics Committee is a standing committee of the Association. The Committee consists of six (6) appointed members including the chairperson. The editor of the Ethical Standards Casebook serves as an ex-officio member of this committee without vote. One third of the members are appointed annually for a three (3) year term by the President-Elect; appointments are subject to confirmation by the APGA Board of Directors. Any vacancy occurring on the committee will be filled by the President in the same manner, and the person appointed shall serve the unexpired term of the member whose place he or she took. Committee members may be reappointed to not more than one (1) additional consecutivve term.

The Chairperson of the Committee is appointed by the incumbent President-Elect, subject to confirmation by the APGA Board of Directors. A Chairperson may be reappointed to one additional term during any three-year period.

## Role and Function of the Ethics Committee

The role of the Ethics Committee of the Association is to assist in the arbitration and conciliation of conflicts among members of the Association. The Committee is responsible for:

1. educating the membership as to the Association's ethical standards,
2. monitoring and periodically upgrading the documents and procedures pertinent to the ethical standards, and
3. receiving and processing complaints of alleged violations of the ethical standards of the Association.

In processing complaints about alleged ethical misconduct, the committee will compile an objective factual account of the dispute in question and make the best possible recommendation for the resolution of the case. The committee shall, in taking any action, do so only for cause, shall only take that degree of disciplinary action which is reasonable, shall utilize these procedures with objectivity and fairness, and in general shall act only in furtherance of the interests and objectives of the Association and its membership.

## Members of the Committee

The members of the Ethics Committee must be conscious that their position is extremely important and their decisions involve the rights of many individuals, the reputation of the personnel and guidance community, and the careers of the members. The committee members have an obligation to act in an unbiased manner, to work expeditiously, to safeguard the confidentiality of the committee's activities and to follow procedures that protect the rights of all individuals involved.

## The Chairperson

In addition to the above guidelines for members of the committee, the chairperson has the additional responsibilities of:

1. Receiving (via APGA Headquarters) complaints that have been certified for membership status of the accused and the accuser.
2. Notifying the accuser and accused of receipt of the case.
3. Notifying the members of the Ethics Committee of the case within ten (10) days after it is received.
4. Following up on the necessary arrangements for case reviewers and hearings.
5. Presiding over the meetings of the committee.
6. Preparing and sending (by certified mail) communications on the recommendations and decisions of the committee.
7. Arranging for legal advice with assistance and financial approval of the APGA Executive Vice President.

## Procedures for Submitting and Processing Complaints

The procedures for submitting complaints to the Ethics Committee are as follows:

1. The first step is for the accuser to contact the President of the state branch association to determine if the complaint can be resolved at the state level.
2. In cases where a resolution is not forthcoming at the state leel, the accuser shall prepare a formal written statement of the complaint, stating the details of the alleged violations and shall submit it witnessed by one APGA member of the state branch. Action or consideration by the APGA Ethics Committee may not be initiated until this requirement is satisfied.
3. Written statements must include a statement indicating the section or sections of the Ethical Standards that are allegedly being violated as well as the date(s) of the alleged violation.
4. All complaints that are directed to the APGA Ethics Committee should be mailed to:

   The Ethics Committee
   C/o The Executive Vice President
   American Personnel and Guidance Association
   Two Skyline Place, Suite 400
   5203 Leesburg Pike
   Falls Church, Virginia 22041

   The envelope must be marked "CONFIDENTIAL". This procedure is necessary to assure the confidentiality for the person submitting the complaint and the person accused in the complaint.
5. The APGA Executive Vice President or in his/her absence the Associate Executive Vice President (Staff) shall: (a) check on the membership status of the accused in the case, (b) confer with legal counsel, and (c) send the case to the chairperson of the APGA Ethics Committee within ten working days after it is received in APGA Headquarters.

   Staff verification of membership and APGA legal opinions on the legitimacy of the complaint shall be included among the documents sent to the committee.
6. All correspondence, records, and activities of the APGA Ethics Committee will remain confidential.
7. Within ten (10) days of receipt of a written statement of the alleged violation of ethical practices, the chairperson of the APGA Ethics Committee shall do the following:

   (a) acknowledge receipt of the complaint;

   (b) review the complaint and recommendations from the APGA legal counsel;

   (c) direct a letter to the accuser acknowledging receipt of the complaint, informing the accuser that the case will be investigated by the committee, and outlining the procedures to be followed in the investigation;

   (d) direct a letter to the accused member informing the member of accusations lodged against the accused, asking for a response and requesting that relevant information be submitted to the chairperson within thirty (30) days;

   (e) direct a letter to the members of the APGA Ethics Committee notifying them of the case and presenting them with an action plan for investigation.
8. The APGA Ethics Committee will review the case and make recommendations for a dismissal of the charges or opportunity for a formal hearing before the APGA Ethics Committee in full compliance with the APGA Bylaws and any procedures specified by the Board of Directors and Senate.
9. The APGA Ethics Committee chairperson may ask the president of the APGA to appoint an investigating committee at the local or state level to gather and submit relevant information concerning the case to the committee.

## Options Available to the Ethics Committee

The Ethics Committee shall have the power to make any of the following decisions:

1. Dismiss the charges.

2. Notify the member accused of the violation of the Ethical Standards that the practice in which the member engages is unethical and the member shall be given the opportunity to desist.

3. The member accused will also be notified of his/her right to a formal hearing on the case before the APGA Ethics Committee. The accused shall notify the APGA Ethics Committee chairperson of his/her decision in the matter. Schedule a formal hearing on the case, in which instance, the hearing shall be conducted within ten (10) days at a time of the annual APGA convention and shall be held under the following conditions:

(a) The results of the preliminary investigation indicate that additional information is needed.

(b) The member accused of the violations and the member who made the charges are present at the hearing.

(c) The member charged with the ethics violation requests, in a letter to the APGA Ethics Committee, that a hearing be convened.

(d) Both the accused member and the accuser, and any witnesses that they may have, must pay their own expenses.

(e) Witnesses may be brought to make statements at the hearing by either party (accused or accuser).

(f) Legal counsel for APGA has the privilege of the floor and shall advise the Ethics Committee.

(4) Revoke the membership in the association with the approval of a majority of the voting members of the Ethics Committee. Such person shall remain ineligible for membership in the association for a period to be determined by the APGA Ethics Committee.

## Procedures for Hearings

The chairperson of the Ethics Committee, with the concurrence of the APGA president and legal counsel, shall decide whether a hearing by the Ethics Committee is necessary, justified, or mandated. The procedures as to a hearing shall include the following:

1. The chairperson of the Ethics Committee shall notify the accuser and the accused of the procedures to be followed during the investigation or hearing, including the date and place for the hearing.

2. Any hearing shall be held in a place designated by the APGA President. No observers shall be admitted without permission of the accused.

3. The chairperson of the APGA Ethics Committee shall preside over all sessions, set schedules for presentation of information, call persons to appear before the committee, see that time limits are followed, arrange for recording of proceedings, distribute information to all committee members, and close the hearing.

4. After any hearing or investigation and examination of all information or statements, the APGA Ethics Committee shall deliberate in private and by majority vote of its members, make one of the following recommendations:

(a) Dismiss the case.

(b) Issue a reprimand to the accused member and make suggestions for corrective action.

(c) Revoke membership.

(d) Place the accused member on probation for a specified period of time, subject to review by the Ethics Committee.

5. At the conclusion of a hearing and/or investigation, the chairperson shall forward all materials collected by the committee, along with a written summary of the work of the committee and its recommendations, to the APGA headquarters, and notify all persons concerned with the allegations of the decision made by the committee.

## Appeal Procedures

The accuser and accused shall be advised of the appeal procedures by the Chairperson of the APGA Ethics Committee. The following procedures shall govern appeals:

1. A three-member review committee composed of the Executive Vice President of the APGA, the president of the APGA Division with which the accused member is most closely identified, and the immediate past president of the APGA as members. The APGA attorney shall serve as legal adviser.

2. The appeal must be in writing to the APGA President and indicate the basis upon which it is made.

3. The appeal will be forwarded to the president of the APGA.

4. The review committee shall review all materials considered by the APGA Ethics Committee.

5. Within thirty (30) days of this review the members on the review committee shall submit to the president of the APGA a written statement giving their opinion regarding the decision of the Ethics Committee. Each member shall concur with or dissent from the decision of the Ethics Committee.

6. The President of APGA will reach a decision based on the considered opinions of the review committee from the following alternatives:

(a) Support the decision of the Ethics Committee.

(b) Reverse the decision of the Ethics Committee.

7. The parties to the appeal shall be advised of the action in writing.

Legal counsel may be brought to hearings as advisers for the accused or the accuser, but they may not participate beyond advising.

Legal counsel for the APGA has the privilege of the floor and shall advise the review committee.

## Records

Records of the APGA Ethics Committee and the review committee shall remain at the APGA Headquarters.

# APGA LEGAL DEFENSE PROGRAM

## I. Statement of Purpose

The APGA Legal Defense Program for APGA members was established by the APGA Board of Directors at its meeting, December 8-10, 1977, to assist members in their legal efforts to redress discrimination or unfair practices in employment-related matters. The kind of legal disputes for which members may request financial assistance include: age, sex, religion and race discriminatory practices; fair employment practices (non-promotion, non-tenure); denial of right to set up independent practice as a counselor, etc. Members of APGA who feel they have legitimate grievances to file and who are eligible to participate should request an application for support from the APGA Counselor Legal Defense Program.

The purpose of this program is to provide assistance to eligible APGA members to enable them to resolve legal disputes in matters relating to their primary responsibilities or interests in the area of human development [see APGA Bylaws, Article II, Section 2(a)]. An APGA member eligible for this program must be a member in good standing for at least one year prior to the onset of the legal dispute.

## II. Obtaining the Revenue for the Fund

A. The Board of Directors establishes the budget and authorizes membership solicitation of additional voluntary contributions for the fund.

B. Announcements about the Legal Defense Program are issued through the *Guidepost*. Information describing the Program is included with membership renewals. Voluntary *tax deductible* contributions will be added to the corpus for the fund.

C. The respnsibility for the APGA Legal Defense Program shall rest with the APGA Board of Directors. Policies and guidelines to govern the Program's operation shall be solely its responsibility.

## III. APGA Review Panel and Guidelines

A. The President, Past President and Executive Vice President shall serve as a Review Panel for all applications for assistance from the Legal Defense Program. Their judgement shall be made in accordance with Guidelines established by the APGA Board of Directors.

1. Member applicants seeking support from these Funds will be notified of the decision of the Review Panel within thirty (30) working days of receipt of the application and supporting documents.

2. Rejected applications are subject to appeal to the APGA Board of Directors at its next meeting.

B. The Guidelines for obtaining financial support from this program include:

1. Two Hundred and Fifty Dollars ($250.00) of legal fees and expenses must be paid by the APGA member.

2. After the $250.00 of legal expenses are paid by the member, a minimum of $250.00 shall be provided by any of the following:
   a. A state branch
   b. A state branch chapter
   c. A state or national division
   d. Non APGA sources

3. After ascertaining that expenditures made by the member and other sources total at least $500.00, a sum not to exceed $500.00 may be provided to the approved member from the APGA Legal Defense Fund.

4. Should the receipted expenditures exceed the initial $500.00, costs above that $500.00 may be reimbursed up to an additional $500.00 sum per member per act or occurrence. If more than one member is involved in the same occurrence under litigation, only one $500.00 payment will be authorized, except as determined by the APGA Board of Directors.

5. Expenditures will be limited to the authorized sums in the Legal Defense Fund.

C. The dispute in question must be job related. Excluded from eligibility would be cases such as:

1. Criminal suits (non-professionally related).
2. Licensure outside of the counseling profession.
3. Professional liability suits.

The above exclusions are intended only as examples and do not represent the universe of excludable possibilities outside job-setting incidents.

## IV. Application Procedures

A. The APGA member requests from APGA Headquarters an "Application for Assistance from APGA Legal Defense Fund" claim. The completed claim form is sent to the APGA Executive Vice President. The member should complete these forms during the legal proceedings. These records shall be treated as confidential documents.

B. Upon receipt of a completed "Application" and a "Financial affidavit" signed by the member and the member's attorney, guaranteeing member and other expenditures of at least $500.00, the Executive Vice President will review all information in relation to APGA Board of Directors' established policies and procedures and submit this information to the Review Panel for determination of eligibility. A memorandum of understanding between the APGA member and lawyer of record will be appended to the Application citing additional legal expenses not to exceed $500.00.

C. The State Branch President, acting as a representative of APGA, shall be required to verify the expenditures of the first $500.00.

D. Once eligibility for assistance is determined, the member will be notified and a check for the appropriate amount not to exceed $500.00 will be mailed payable to the attorney.

E. If the Review Panel determines the member is ineligible for assistance, the member can appeal this decision to the APGA Board of Directors. Notification including the reason will be sent to the member.

F. Falsification of the Financial Affidavit and submission of fraudulent statements shall render the application null and void. If such falsification or fraudulence is discovered after payment is made, APGA reserves the right to take whatever action is necessary to secure reimbursement.

This Program established by the APGA Board of Directors, December 8-10, 1977, and revised by the Board of Directors, July 12-15, 1979.

**AMERICAN PERSONNEL AND GUIDANCE ASSOCIATION**
**Two Skyline Place, Suite 400**
**5203 Leesburg Pike**
**Falls Church, Virginia 22041**

# APPLICATION FOR ASSISTANCE FROM THE APGA LEGAL DEFENSE FUND

Date of Application _____

APGA Membership No. _____

Name _____

Business Address _____

Home Address _____

Business Phone _____ Home Phone _____

Brief Statement of Dispute:

Expenditures:

1. Member Expenditure of $250.00: Yes _____ No _____
2. Other Certified Additional Expenditure ($250.00 minimum): Yes _____ No _____

Expenditures verified by State Branch President:

_____ _____

Signature of Branch President State Branch

All of the information in this application is true and correct to the best of my knowledge.

_____

Signature of Applicant

**AMERICAN PERSONNEL AND GUIDANCE ASSOCIATION**
**Two Skyline Place, Suite 400**
**5203 Leesburg Pike**
**Falls Church, Virginia 22041**

## FINANCIAL AFFIDAVIT FOR APGA LEGAL DEFENSE FUND

Name of APGA Member _____

Name of Attorney _____

Address _____

Statement of Legal Costs:

Received by Attorney $ _____

Remaining Fees $ _____

The information stated in this affidavit is true and correct

_____ _____
APGA Member Attorney-at-Law

The above named persons personally appeared before me, the undersigned notary public, in aforesaid county and state and with whom I am personally acquainted and who upon oath acknowledge that they executed the foregoing document for the purposes therein contained.

State of _____, County of _____

Date _____ _____
Notary Public

My commission expires on _____

## THE AMERICAN PERSONNEL AND GUIDANCE ASSOCIATION,

A professional educational association for members of the guidance and counseling professions, offers many valuable services to it's members. These include:

- Division memberships
- Journals
- APG Foundation (opportunities for tax-free gifts)
- Insurance benefits
- Career Placement Center
- Publications at special member prices

You can benefit professionally from a membership in APGA. For further information write to:

APGA HEADQUARTERS
Two Skyline Place
Suite 400
5203 Leesburg Pike
Falls Church, VA 22041